TITLE 43—PUBLIC LANDS

Chap.		Sec.
36.	Outer Continental Shelf Resource Management [New]	1801
37.	Public Rangelands Improvement [New]	1901
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CHAPTER 2—GEOLOGICAL SURVEY

§ 50. Survey's share of cost of topographic mapping or water resources investigations carried on with States

REPEALED

Pub. L. 96-126, title I, § 100, Nov. 27, 1979, 93 Stat. 961.

Pub. L. 95-465, title I, § 100, Oct. 17, 1978, 92 Stat. 1285.

Pub. L. 95-74, title I, § 100, July 26, 1977, 91 Stat. 290.

CHAPTER 7—HOMESTEADS

SUBCHAPTER VIII—ALASKA HOMESTEADS

§§ 270-15 to 270-17

REPEAL OF SECTIONS

Sections repealed by Pub. L. 94-579, title VII, § 703(a), Oct. 21, 1976, 90 Stat. 2789, effective on and after the tenth anniversary of the date of approval of this Act, Oct. 21, 1976.

CODIFICATION

Repeal note set out above to correct error in main edition.

CHAPTER 8A—GRAZING LANDS

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 315m-2, 1751, 1752, 1903 of this title; title 25 section 621; title 30 section 601; title 50 App. section 561.

CHAPTER 12—RECLAMATION AND IRRIGATION OF LANDS BY FEDERAL GOVERNMENT

SUBCHAPTER XI-A—RECLAMATION SAFETY OF DAMS [NEW]

Sec.	
506.	Authority of Secretary to make modifications.
507.	Construction for dam safety.
508.	Costs incurred in the modification of structures.
509.	Authorization of appropriations; Report to Congress.

SUBCHAPTER I—GENERAL PROVISIONS

§ 371. Definitions; "Secretary", "reclamation law", "reclamation fund", "project", and "division of a project"

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-578, Nov. 2, 1978, 92 Stat. 2471, as "Reclamation Safety of Dams Act of 1978", see Short Title of 1978 Amendment note set out under section 506 of this title.

ACT REFERRED TO IN OTHER SECTIONS

The Reclamation Act is referred to in sections 164, 237h, 238, 336d, 373a, 374, 375, 375b, 384, 390, 391a, 393, 413, 420, 422, 422b, 423h, 425, 434, 441, 442, 446, 447, 448, 451i, 455 to 455b, 472, 485a, 485h-5, 499a, 504, 505, 506, 508, 511, 522 to 525, 541, 544, 545, 547, 561, 564, 593a, 593b, 595, 597, 600b, 617k, 620c, 626, 628, 1303, 1511, 1554 of this title; title 16 sections 406d-5, 460*l*-18 to 460*l*-20, 590z-8, 590z-11; title 25 section 382; title 30 sections 83, 84, 125, 191; title 42 section 7878; title 50 App. section 568.

§ 377. General expenses of Bureau of Reclamation chargeable to general reclamation fund

The cost and expense after June 30, 1945, of the office of the Commissioner in the District of Columbia, and, except for such cost and expense as are incurred on behalf of specific projects, of general investigations and of nonprojects offices outside the District of Columbia, shall be charged to the reclamation fund and shall not be charged as a part of the reimbursable construction or operation and maintenance costs.

(Dec. 5, 1924, ch. 4, § 4, subsec. O, 43 Stat. 704; Apr. 19, 1945, ch. 80, 59 Stat. 54.)

CHANGE OF NAME

The Commissioner of the Bureau of Reclamation in the Department of the Interior and the Bureau of Reclamation were redesignated the Commissioner of the Water and Power Resources Service and the Water and Power Resources Service, respectively, pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

§ 377a. Limitation on use of funds where organizations or individuals are in arrears on contract charges

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

REPEALED

Pub. L. 96-69, title III, § 300, Sept. 25, 1979, 93 Stat. 447.

Pub. L. 95-96, title III, § 300, Aug. 7, 1977, 91 Stat. 804.

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§ 385a. Payments to school districts for education of dependents of construction personnel; cooperative arrangements; chargeable to project

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

SUBCHAPTER III—INSTITUTION AND CONSTRUCTION OF PROJECTS

§ 421e. Municipal and industrial water supply delivery and distribution; allocation of loan funds; loan repayment contract requirements; rate of interest

Unless otherwise provided in the Act authorizing construction of the project, the delivery and distribution of municipal and industrial water supplies shall be deemed to be an authorized project purpose under sections 421a to 421h of the title, and where appropriate, an allocation of loan funds acceptable to the Secretary shall be made between irrigation and municipal and industrial purposes. Loan repayment contracts shall require that the borrower pay interest on that portion of the unamortized loan obligation (including interest during construction) allocated in each year to municipal and industrial purposes at the rate provided in the Act authorizing the project, or absent such an authorized rate, at a rate determined by the Secretary of the Treasury as of the beginning of the fiscal year in which the contract, or contract amendment entered into pursuant to section 421f of this title, is executed, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from date of issue, and by adjusting such average rate to the nearest one-eighth of 1 per centum.

(July 4, 1955, ch. 271, § 5, as added Oct. 3, 1972, Pub. L. 92-487, 86 Stat. 805.)

CODIFICATION

Section is set out in this supplement to correct error appearing in the main edition.

SUBCHAPTER VI—WATER RIGHT APPLICATIONS AND LAND ENTRIES

§ 434. Amount of land for which entry may be made; farm unit; subdivision of lands

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

SUBCHAPTER VIII—TAXATION

§ 455b. State tax as lien upon lands; prior lien of United States; rights of holder of tax title

[See main edition for text]

(Apr. 21, 1928, ch. 394, § 3, 45 Stat. 439; June 13, 1930, ch. 477, 46 Stat. 581.)

CODIFICATION

Section credits are set out in this supplement to correct typographical error appearing in the main edition.

SUBCHAPTER XI—MAINTENANCE AND OPERATION OF WORKS GENERALLY

§ 502. Emergency fund to assure continuous operation of irrigation and power systems maintained by Bureau of Reclamation

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

TRANSFER OF FUNCTIONS

The power marketing functions of the Bureau of Reclamation, including construction, operation, and maintenance of transmission lines and attendant facilities, were transferred to the Secretary of Energy by section 7152(a)(1)(E), (3) of Title 42, The Public Health and Welfare, and are to be exercised by the Secretary through a separate Administration within the Department of Energy.

TEMPORARY AUTHORITY OF SECRETARY OF THE INTERIOR TO FACILITATE EMERGENCY ACTIONS WITH REGARD TO 1976-1977 DROUGHT

Pub. L. 95-18, Apr. 7, 1977, 91 Stat. 36, as amended by Pub. L. 95-107, Aug. 17, 1977, 91 Stat. 870; Pub. L. 95-226, Feb. 7, 1978, 92 Stat. 10, provided: "That the Secretary of the Interior, hereinafter referred to as the 'Secretary', acting through the Bureau of Reclamation and the Bureau of Indian Affairs pursuant to the authorities in the Federal Reclamation Laws (74 Stat. 882, as amended) and other appropriate authorities of the Secretary, and the authorities granted herein, is directed to—

"(a) perform studies to identify opportunities to augment, utilize, or conserve water supplies available to Federal reclamation projects and Indian irrigation projects constructed by the Secretary; and consistent with existing contractual arrangements, and State law, and without further authorization, to undertake construction, management and conservation activities,which can be expected to have an effect in mitigating losses and damages to Federal reclamation projects and Indian irrigation projects constructed by the Secretary resulting from the 1976-1977 drought period: *Provided*, That construction activities undertaken to implement the programs authorized by this Act shall be completed by January 31, 1978: *Provided further*, That where the Secretary finds that such construction activities have been diligently pursued but cannot be completed by January 31, 1978, due to bad weather, delays in delivery of required supplies, or other unanticipated and unavoidable circumstances, the Secretary is authorized to allow continuation and completion of construction for a reasonable time beyond January 31, 1978;

"(b) assist willing buyers in their purchase of available water supplies from willing sellers and to redistribute such water to irrigators based upon priorities to be determined by the Secretary within the constraints of State water laws, with the objective of minimizing losses and damages resulting from the drought; and

"(c) undertake expedited evaluations and reconnaissance studies of potential facilities to mitigate the effects of a recurrence of the current emergency and make recommendations to the President and to the Congress evaluating such potential undertakings including, but not limited to, wells, pumping plants, pipelines, canals, and alterations of outlet works of existing impoundments.

"Sec. 2. (a) Payments for water acquired from willing sellers will be at a negotiated price, but will not confer any undue benefit or profit to any person or persons compared to what would have been realized if the water had been used in the normal irrigation of crops adapted to the area, as determined by the Secretary.

"(b) Purchases of water acquired under subsection (a) above shall be made at a price to be determined by the Secretary: *Provided*, That the selling price shall be sufficient to recover all expenditures made in acquiring the water.

"Sec. 3. (a) The Secretary shall determine for purposes of this Act [Pub. L. 95-18] the priority of need for allocating the water, taking into consideration, among other things, State law, national need, and the effect of losing perennial crops due to drought.

"(b) For the purposes of this Act the term 'irrigators' shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within Federal reclamation projects and within all irrigation projects constructed by the Secretary for Indians.

"(c) For the purposes of this Act [Pub. L. 95-18], the term 'Federal reclamation project' means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended [section 422a et seq. of this title].

"Sec. 4. The Secretary is hereby authorized to defer without penalty, the 1977 payments of any installment of charges including operation and maintenance costs owed to the United States by irrigators as he deems necessary because of financial hardship caused by extreme drought conditions: *Provided*, That any deferment shall be recovered and such recovery may be accomplished by extending the repayment period under the contracting entities' existing contracts with the United States.

"Sec. 5. Actions taken pursuant to this Act [Pub. L. 95-18] are in response to emergency conditions and depend for their effectiveness upon their completion prior to or during the 1977 irrigation season and, therefore, are deemed not to be major Federal actions significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (83 Stat. 852, as amended, 42 U.S.C. 4321).

"Sec. 6. The program established by this Act [Pub. L. 95-18] shall, to the extent practicable, be coordinated with emergency and disaster relief operations conducted by other Federal and State agencies under other provisions of law. The Secretary shall consult with the heads of such other Federal and State agencies as he deems necessary. The heads of all other Federal agencies performing relief functions under other Federal authorities are hereby authorized and directed to provide the Secretary, or his designee, such information and records as the Secretary or his designee shall deem necessary for the administration of this Act.

"Sec. 7. Not later than May 1, 1978, the Secretary shall provide the President and the Congress with a complete report on expenditures and accomplishments under this Act [Pub. L. 95-18].

"Sec. 8. (a) The Secretary is authorized to make loans to irrigators for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976-1977 drought period.

"(b) Such loans shall be without interest with the repayment schedule to be determined by the Secretary, but loans for acquiring water under section 2 of this Act shall not exceed five years in duration.

"(c) The authorities conferred by this Act shall terminate on November 30, 1977.

"(d) The Secretary may condition grants, or may waive all or a portion of the repayment of loans made under this Act [Pub. L. 95-18], upon the agreement of a recipient to undertake a program of water conservation and efficient management meeting standards established by the Secretary. The Secretary shall report to Congress on measures which he has undertaken to institute such conservation and management procedures.

"Sec. 9. There is authorized to be appropriated $100,000,000 to carry out the provisions of this Act [Pub. L. 95-18] which shall include the construction of emergency physical facilities under terms and conditions applying to expenditures from the emergency fund created by the Act of June 26, 1948 (62 Stat. 1052) [this section and section 503 of this title].

"Sec. 10. (a) Funds available to the Secretary pursuant to this Act [Pub. L. 95-18] and the Act of June 26, 1948 (62 Stat. 1052) [this section and section 503 of this title], shall be available for expenditure on behalf of (1) projects financed through loans pursuant to the Small Reclamation Projects Act of 1956 (70 Stat. 1044) as amended [section 422a et seq. of this title], and (2) projects financed with non-Federal funds notwithstanding the provisions of the third sentence of section 46 of the Act of May 25, 1926 (44 Stat. 649, 650) [section 423e of this title], and any other similar provision of law. Expenditures undertaken under this authority shall be governed by the same terms and conditions as apply to programs regularly constructed under Federal reclamation law: *Provided*, That not more than 15 per centum of such available funds may be used on behalf of nonfederally financed projects and not more than $1,000,000 may be expended on behalf of any individual contracting entity.

"(b) Funds available to the Secretary pursuant to this Act [Pub. L. 95-18] and the Act of June 26, 1948 (62 Stat. 1052) [this section and section 503 of this title], shall be available for expenditure for drought emergency programs conducted heretofore or hereafter by State water resource agencies during fiscal year 1977 if such programs are found to be compatible with the broad purposes of this Act. In recognition of the widespread and diffused nature of the benefits deriving from this subsection, all funds expended under the authority of this subsection shall be nonreimbursable.

"(c) Funds available for expenditure under the provisions of this Act [Pub. L. 95-18] may be used by the Secretary for the purchase of water or for acquisition of entitlement to water from any available source for the purpose of mitigating damage to fish and wildlife resources caused by drought conditions. Not to exceed $10,000,000 may be expended for such activities and any amount so expended shall be nonreimbursable.

"Sec. 11. Nothing in this Act [Pub. L. 95-18] shall be construed as limiting or restricting the power and authority of the United States or—

"(a) as affecting in any way any law governing appropriations or use of, or Federal right to, water on public lands;

"(b) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

"(c) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two States and the Federal Government;

"(d) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies; and

"(e) as modifying the terms of any interstate compact."

SUBCHAPTER XI-A—RECLAMATION SAFETY OF DAMS [NEW]

§ 506. Authority of Secretary to make modifications

In order to preserve the structural safety of Bureau of Reclamation dams and related facilities the Secretary of the Interior is authorized to perform such modifications as he determines to be reasonably required. Said performance of work shall be in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory or supplementary thereto).

(Pub. L. 95-578, § 2, Nov. 2, 1978, 92 Stat. 2471.)

REFERENCES IN TEXT

Act of June 17, 1902, 32 Stat. 388, referred to in text, is popularly known as the Reclamation Act, and is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-578, Nov. 2, 1978, 92 Stat. 2471, provided: "That this Act [enacting this subchapter and amending section 1511 of this title] shall be cited as the 'Reclamation Safety of Dams Act of 1978'."

§ 507. Construction for dam safety

Construction authorized by this subchapter shall be for the purposes of dam safety and not for the specific purposes of providing additional conservation storage capacity or of developing benefits over and above those provided by the original dams and reservoirs. Nothing in this subchapter shall be construed to reduce the amount of project costs allocated to reimbursable purposes heretofore authorized.

(Pub. L. 95-578, § 3, Nov. 2, 1978, 92 Stat. 2471.)

§ 508. Costs incurred in the modification of structures

(a) Costs heretofore or hereafter incurred in the modification of structures under this subchapter, the cause of which results from age and normal deterioration of the structure or from nonperformance of reasonable and normal maintenance of the structure by the operating entity shall be considered as project costs and will be allocated to the purposes for which the structure was authorized initially to be constructed and will be reimbursable as provided by existing law.

(b) Costs heretofore or hereafter incurred in the modification of structures under this subchapter, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law.

(Pub. L. 95-578, § 4, Nov. 2, 1978, 92 Stat. 2471.)

REFERENCES IN TEXT

The Federal Reclamation law, referred to in subsec. (b), probably means act June 17, 1902, ch. 1093, 32 Stat. 388, popularly known as the Reclamation Act, and Acts amendatory thereof and supplementary thereto, which are classified generally to this chapter (§ 371 et seq.). For complete classification of act June 17, 1902, to the Code, see Short Title note set out under section 371 of this title and Tables.

§ 509. Authorization of appropriations; report to Congress

There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary, but not to exceed $100,000,000, to carry out the provisions of this subchapter to remain available until expended if so provided by the appropriations Act: *Provided*, That no funds shall be obligated for carrying out actual construction to modify an existing dam under authority of this subchapter prior to sixty days (which sixty days shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) from the date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification.

(Pub. L. 95-578, § 5, Nov. 2, 1978, 92 Stat. 2471.)

SUBCHAPTER XIV—PATENTS AND FINAL WATER RIGHT CERTIFICATES

§ 545. Appointment of agents to receive payments; record of payments and amounts owing

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

SUBCHAPTER XV—TOWN SITES, PARKS, PLAYGROUNDS, AND SCHOOL SITES

§ 570. Conveyance of land to school district

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

CHAPTER 12A—BOULDER CANYON PROJECT

SUBCHAPTER I—BOULDER CANYON PROJECT ACT

§ 617d. Contracts for storage and use of waters for irrigation and domestic purposes; generation and sale of electrical energy

[*See main edition for text of section*]

(Dec. 21, 1928, ch. 42, § 5, 45 Stat. 1060; June 10, 1920, ch. 285, § 321, formerly § 320, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 863, and renumbered Nov. 9, 1978, Pub. L. 95-617, title II, § 212, 92 Stat. 3148.)

§ 617e. Uses to be made of dam and reservoir; title in whom; leases, regulations; limitation on authority of Federal Power Commission

[*See main edition for text of section*]

(Dec. 21, 1928, ch. 42, § 6, 45 Stat. 1061; June 10, 1920, ch. 285, § 321, formerly § 320, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 863, and renumbered Nov. 9, 1978, Pub. L. 95-617, title II, § 212, 92 Stat. 3148.)

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were

transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

§ 617k. Definitions

[See main edition for text of section]

(Dec. 21, 1928, ch. 42, § 12, 45 Stat. 1064; June 10, 1920, ch. 285, § 321, formerly § 320, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 863, and renumbered Nov. 9, 1978, Pub. L. 95-617, title II, § 212, 92 Stat. 3148.)

§ 617*l*. Colorado River compact approval

[See main edition for text of section]

(Dec. 21, 1928, ch. 42, § 13, 45 Stat. 1064; June 10, 1920, ch. 285, § 321, formerly § 320, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 863, and renumbered Nov. 9, 1978, Pub. L. 95-617, title II, § 212, 92 Stat. 3148.)

§ 617p. Claims of United States; priority

Except as provided in title 11, claims of the United States arising out of any contract authorized by this subchapter shall have priority over all others, secured or unsecured.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 332, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95-598 inserted introductory phrase "Except as provided in title 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Dates note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 16—SALE AND DISPOSAL OF PUBLIC LANDS

§ 687b-2. Liability for mining; vested rights

REPEAL OF SECTION

Section repealed by Pub. L. 94-579, title VII, § 703(a), Oct. 21, 1976, 90 Stat. 2789, effective on and after the tenth anniversary of the date of approval of this Act, Oct. 21, 1976.

CHAPTER 22—RIGHTS-OF-WAY AND OTHER EASEMENTS IN PUBLIC LANDS

§ 942-1. Rights of way in Alaska; railroad rights of way; reservations; water transportation connections; State title to submerged lands; Federal repossession as trustee; navigable waters defined; posting schedules of rates; changes in rates

CODIFICATION

Section 6 of title 49, referred to in text, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49. See, particularly, section 10762 of revised Title 49.

§ 975. Alaskan railroads; location, construction, and operation; passes

The President of the United States is empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of sections 975 to 975g of this title; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of said sections; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of said sections; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under said sections; to fix the compensation of all officers, agents, or employees appointed or designated by him; and, notwithstanding any other provision of law or regulation, to fix relocation, travel and transportation expenses for the General Manager of the railroad designated under sections 975 to 975g of this title to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of said sections; to exercise the power of eminent domain in acquiring property for such use which use is declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights-of-way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction, and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under said sections; and except also that the issuance of passes to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, and persons exclusively engaged in charitable and eleemosynary work when engaged in their work in

Alaska; to indigent, destitute, and homeless persons inmates of hospitals and charitable and eleemosynary institutions, and to such persons when transported by charitable societies or hospitals and the necessary agents employed in such transportation; to newsboys on trains, persons injured in wrecks, and physicians and nurses attending such persons; the interchange of passes for the officers, agents, and employees of common carriers, and their families; and the carrying of passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation is permitted; to receive compensation for the transportation of passengers and property and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease of such railroad or railroads shall be for a longer period than twenty years and no other lease authorized in sections 975 to 975g of this title shall be for a longer period than fifty-five years, or in the event of failure to lease, to operate the same until the further action of Congress. If said railroad or railroads, including telegraph and telephone lines, are leased under the authority given under said sections, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper, any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him. The price to be paid in case of purchase shall in no case exceed the actual physical value of the railroads; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads hereinprovided for and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of said sections; to utilize in carrying on the work herein provided or any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the successors to the Isthmian Canal Commission are authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in said sections.

(As amended Nov. 1, 1978, Pub. L. 95-565, § 4(a), 92 Stat. 2399.)

REFERENCES IN TEXT

The interstate commerce laws, referred to in text, probably mean the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended and supplemented), which was classified generally to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 13, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

AMENDMENTS

1978—Pub. L. 95-565 added provision authorizing the President to fix relocation, travel and transportation expenses for the General Manager of the railroad.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-565 provided that: "This section [amending this section] shall apply to the General Manager serving on the date of enactment of this section [Nov. 1, 1978] with respect to relocation, travel, or transportation expenses which were incurred before or after the date of enactment of this section."

RENTAL OF ALASKA RAILROAD LANDS; REPORT TO CONGRESS

Pub. L. 95-611, § 6, Nov. 8, 1978, 92 Stat. 3090, provided that:

"(a) The Secretary of Transportation shall conduct an investigation and study for purposes of determining equitable rates to be charged for the rental of Alaska Railroad lands. In carrying out such investigation and study, the Secretary shall consider—

"(1) the per centum increase in such rates proposed after 1977 as compared with rates in effect on January 1, 1977;

"(2) the services and the quality thereof provided by the rentors of such land and the services and the quality thereof received by such rentors from such railroad;

"(3) the burden on commerce which may result from such proposed rate increase; and

"(4) such other factors as may be appropriate.

The Secretary shall report the results of such investigation and study to the Congress not later than one year after the date of enactment of this Act [Nov. 8, 1978].

"(b) Prior to 180 days after the date on which the Secretary's report pursuant to subsection (a) is received by the Congress, rental charges on lands rented by the Alaska Railroad shall not be increased by more than 100 per centum of the amount charged for such land on January 1, 1977."

CHAPTER 29—SUBMERGED LANDS

SUBCHAPTER III—OUTER CONTINENTAL SHELF LANDS

Sec.

1344. Outer Continental Shelf leasing program [New].
(a) Schedule of proposed oil and gas lease sales.
(b) Estimates of appropriations and staff required for management of leasing program.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1331, 1340, 1811 of this title; title 16 section 1432.

SUBCHAPTER III—OUTER CONTINENTAL SHELF LANDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 156, 1811, 1813, 1815, 1842, 1861, 1863, 1864, 1866; title 16 sections 460*l*-5; 470h, 471i, 1456; 1456a; title 29 sections 213, 302, 402, 630, 653, 1002; title 33 sections 941, 1321, 1503; title 41 section 357; title 42 sections 2000e, 7152.

§ 1331. Definitions

When used in this subchapter—

[*See main edition for text of* (a)]

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this subchapter transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term "lease" means any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 1454(b)(1) of title 16;

(f) The term "affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this subchapter, any State—

(1) the laws of which are declared, pursuant to section 1333(a)(2) of this title, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 1333(a)(1) of this title;

(3) which is receiving, or in accordnace[1] with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil

[1] So in original. Probably should be "accordance".

or gas from vessels, pipelines, or other transshipment facilities;

(g) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term "coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term "human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this subchapter;

(k) The term "exploration" means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term "development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term "antitrust law" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 4332(2)(C) of title 42; and

(q) The term "minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 1702 of this title.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 201, 92 Stat. 632.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsec. (b), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

The Sherman Act, referred to in subsec. (n)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which enacted sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in subsec. (n)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (n)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Wilson Tariff Act, referred to in subsec. (n)(4), is act Aug. 27, 1894, ch. 349, §§ 73 to 77, 28 Stat. 570, as amended. Sections 73 to 76 enacted sections 8 to 11 of Title 15, Commerce and Trade. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

The Act of June 19, 1936, chapter 592, referred to in subsec. (n)(5), is act June 19, 1936, ch. 592, 49 Stat. 1526, as amended, popularly known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-372, § 201(a), added provision that, with respect to functions under this sub-

chapter transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act, the term "Secretary" means the Secretary of Energy or the Federal Energy Regulatory Commission, as the case may be.

Subsec. (c). Pub. L. 95-372, § 201(a), substituted "lease" for "mineral lease" as the term defined and in the definition of that term substituted "any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;" for "any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and".

Subsec. (d). Pub. L. 95-372, § 201(b)(1), substituted a semicolon for a period.

Subsecs. (e) to (q). Pub. L. 95-372, § 201(b)(2), added subsecs. (e) to (q).

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-372 as the "Outer Continental Shelf Lands Act Amendments of 1978", see Short Title of 1978 Amendment note set out under section 1801 of this title.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 1811, 1865 of this title; title 15 section 3301; title 16 section 1453; title 26 section 48.

§ 1332. Congressional declaration of policy

It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

(2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 202, 92 Stat. 634.)

AMENDMENTS

1978—Pub. L. 95-372 redesignated subsecs. (a) and (b) as pars. (1) and (2) and added pars. (3) to (6).

§ 1333. Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures

erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting[1] any outstanding international boundary dispute respecting the outer Continental Shelf.

[*See main edition for text of (3)*]

(b) Longshoremen's and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended, [29 U.S.C. 151 et seq.] any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

(g) Redesignated (f)

(As amended Sept. 18, 1978, Pub. L. 95–372, title II, § 203, 92 Stat. 635.)

REFERENCES IN TEXT

Longshoremen's and Harbor Workers' Compensation Act, referred to in subsec. (b), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

The National Labor Relations Act, as amended, referred to in subsec. (c), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–372, § 203(a), substituted ", and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources," for "and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom,".

Subsec. (a)(2). Pub. L. 95–372, § 203(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 95–372, § 203(c), (h), redesignated former subsec. (c) as (b), and in subsec. (b) as so redes-

[1] So in original. Probably should be "settling".

ignated, substituted "conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf," for "described in subsection (b) of this section,". Former subsec. (b), relating to the jurisdiction of United States district courts over cases and controversies arising out of or in connection with operations conducted on the outer Continental Shelf, was struck out. See section 1349(b) of this title.

Subsec. (c). Pub. L. 95–372, § 203(d), (h), redesignated former subsec. (d) as (c), and in subsec. (c) as so redesignated, substituted "artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device" for "artificial island or fixed structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure". Former subsec. (c) redesignated (b).

Subsec. (d)(1). Pub. L. 95–372, § 203(e)(1), (f), (h), redesignated former subsec. (e)(1) as (d)(1), and in subsec. (d)(1) as so redesignated, substituted "Secretary" for "head" and "artificial islands, installations, and other devices" for "islands and structures". Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 95–372, § 203(g), (h), redesignated former subsec. (e)(2) as (d)(2), and in subsec. (d)(2) as so redesignated, substituted "Secretary" for "head" and "artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking" for "such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof", and struck out provisions which had made failure or refusal to obey any lawful rules and regulations a misdemeanor punishable by a fine of not more than $100, with each day during which such a violation would continue to be deemed a new offense. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95–372, § 203(e)(2), (h), redesignated former subsec. (f) as (e), and in subsec. (e) as so redesignated, substituted "the artificial islands, installations, and other devices referred to in subsection (a) of this section" for "artificial islands and fixed structures located on the outer Continental Shelf". Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 95–372, § 203(e)(3), (h), redesignated former subsec. (g) as (f), and in subsec. (f) as so redesignated, substituted "the artificial islands, installations, and other devices" for "the artificial islands and fixed structures". Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 95–372, § 203(h), redesignated former subsec. (g) as (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1347, 1351 of this title; title 33 section 941.

§ 1334. Administration of leasing

(a) Rules and regulations; amendment; cooperation with State agencies; subject matter and scope of regulations

The Secretary shall administer the provisions of this subchapter relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views, the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit;

(2) with respect to cancellation of any lease or permit—

(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit force;

(B) that such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease or permit term continuously for a period of five years, or for a lesser period upon request of the lessee;

(C) that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (I) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in clause (i) of this subparagraph; and (II) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question;

(3) for the assignment or relinquishment of a lease;

(4) for unitization, pooling, and drilling agreements;

(5) for the subsurface storage of oil and gas other than by the Federal Government;

(6) for drilling or easements necessary for exploration, development, and production;

(7) for the prompt and efficient exploration and development of a lease area; and

(8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this subchapter significantly affect the air quality of any State.

(b) Compliance with regulations as condition for issuance, continuation, assignment, or other transfer of leases

The issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this subchapter shall be conditioned upon compliance with regulations issued under this subchapter.

(c) Cancellation of nonproducing lease

Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this subchapter, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(d) Cancellation of producing lease

Whenever the owner of any producing lease fails to comply with any of the provisions of this subchapter, of the lease, or of the regulations issued under this subchapter, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this subchapter.

(e) Pipeline rights-of-way; forfeiture of grant

Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this subchapter, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial and upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this subchapter.

(f) Competitive principles governing pipeline operation

(1) Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:

(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

(B) Upon the specific request of one or more owner or nonowner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the

costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after September 18, 1978. This subparapraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(2) The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

(3) The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

(4) Nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf.

(g) Rates of production

(1) The leasee[1] shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary of Energy which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

(h) Federal action affecting outer Continental Shelf; notification; recommended changes

The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter recommend such changes in such action as are considered appropriate.

(i) Flaring of natural gas

After September 18, 1978, no holder of any oil and gas lease issued or maintained pursuant to this subchapter shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or workover operations.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 204, 92 Stat. 636.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(8), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-372 expanded provisions formerly contained in subsec. (a)(1) so as to include therein the enforcement of safety and environmental laws and regulations, consultation with the Attorney General and the Federal Trade Commission, and regulations for the suspension or temporary prohibition of any operation or activity including production, the cancellation of leases or permits, the prompt and efficient exploration and development of a lease area, and compliance with the national ambient air quality standards to the extent that activities authorized significantly affect the air quality of any State.

Subsec. (b). Pub. L. 95-372 redesignated as subsec. (b) provisions formerly contained in subsec. (a)(2) conditioning the issuance and continuation of leases or of assignments or other transfers of leases upon compliance with regulations, and struck out provisions that had set a penalty of a fine of not more than $2,000 or imprisonment for not more than six months or both for the knowing and willful violation of rules or regulations promulgated by the Secretary. See section 1350 of this title.

Subsec. (c). Pub. L. 95-372 redesignated as subsec. (c) provisions formerly contained in subsec. (b)(1) covering the cancellation of nonproducing leases for failure of the owner to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter.

Subsec. (d). Pub. L. 95-372 redesignated as subsec. (d) provisions formerly contained in subsec. (b)(2) covering the cancellation and forfeiture of producing leases for failure of the owner to comply with any of the provisions of this subchapter, the lease, or regulations promulgated under this subchapter.

Subsec. (e). Pub. L. 95-372 redesignated as subsec. (e) provisions formerly contained in subsec. (c) relating to pipeline rights-of-way and added provisions relating to regulations prescribed by the Secretary of Transportation and assurances of maximum environmental protection through the use of the best available and safest technologies including the safest practices for pipeline burial, and substituted references to the Federal Energy Regulatory Commission and the Secretary of Energy for existing references to the Federal Power Commission and the Interstate Commerce Commission.

Subsecs. (f) to (i). Pub. L. 95-372 added subsecs. (f) to (i).

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which

[1] So in original. Probably should be "lessee".

relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1337, 1340, 1351 of this title.

§ 1335. Validation and maintenance of prior leases

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1336, 1337, 1353 of this title.

§ 1336. Controversies over jurisdiction; agreements; payments; final settlement or adjudication; approval of notice concerning oil and gas operations in Gulf of Mexico

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1337, 1353 of this title.

§ 1337. Grant of leases by Secretary

(a) Oil and gas leases; award to highest responsible qualified bidder; method of bidding; Congressional consideration of bidding system; notice; annual report to Congress

(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 1335 of this title. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold; or

(H) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this subchapter, except that no such bidding system or modification shall have more than one bid variable.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes

a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

(5)(A) During the five-year period commencing on September 18, 1978, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this subchapter, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this subchapter.

(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on September 18, 1978, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this subchapter.

(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—

(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with

regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, redrilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and areal extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

(9) Within six months after the end of each fiscal year, the Secretary of Energy, in consultation with the Secretary of the Interior, shall report to the Congress with respect to the use of various bidding options provided for in this subsection. Such report shall include—

(A) the schedule of all lease sales held during such year and the bidding system or systems utilized;

(B) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

(C) the benefits and costs associated with conducting lease sales using the various bidding systems;

(D) if applicable, the reasons why a particular bidding system has not been or will not be utilized; and

(E) if applicable, the reasons why more than 60 per centum or less than 20 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection.

(b) Terms and provisions of oil and gas leases

An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of—

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions,

and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this subchapter;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 1334 of this title;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.].

(c) Antitrust review of lease sales

(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to con-

duct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

(4)(A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

(d) Due diligence

No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.

(e) Secretary's approval for sale, exchange, assignment, or other transfer of leases

No lease issued under this subchapter may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

(f) Antitrust immunity or defenses

Nothing in this subchapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(g) Leasing of lands within three miles of seaward boundaries of coastal States

(1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of such State—

(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of such coastal State.

(2) After receipt of nominations for any area of the outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing. The Secretary, in consultation with the Governor of the coastal State, shall then,[1] determine whether any such area may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this subchapter, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

(4) Notwithstanding any other provision of this subchapter, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which has accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

(h) State claims to jurisdiction over submerged lands

Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.

(i) Sulphur leases; award to highest bidder; method of bidding

In order to meet the urgent need for further exploration and development of the sulphur de-

[1] So in original. The comma probably should not appear.

posits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of section 1335(a) of this title, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(j) Terms and provisions of sulphur leases

A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(k) Other mineral leases; award to highest bidder; terms and conditions

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(l) Publication of notices of sale and terms of bidding

Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(m) Disposition of revenues

All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 1338 of this title.

(n) Issuance of lease as nonprejudicial to ultimate settlement or adjudication of controversies

The issuance of any lease by the Secretary pursuant to this subchapter, or the making of any interim arrangements by the Secretary pursuant to section 1336 of this title shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(o) Cancellation of leases for fraud

The Secretary may cancel any lease obtained by fraud or misrepresentation.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 205(a), (b), 92 Stat. 640, 644.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (b)(7), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

The antitrust laws, referred to in subsecs. (c)(3), (4)(B) and (f), are defined in section 1331 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-372, § 205(a), designated existing provisions as par. (1)(A) and (B), and in par. (1) as so redesignated, deleted provisions which restricted authority of Secretary to grant oil and gas leases to situations involving the urgent need for further exploration and development of oil and gas deposits of the submerged lands of the outer Continental Shelf and added provisions permitting the promulgation of regulations for the deposit of cash bids in interest-bearing accounts until the Secretary announces his decision on whether to accept the bids with the earned interest paid either to the Treasury or to unsuccessful bidders, in par. (1)(B) as so redesignated, substituted provisions relating to variable royalty bids based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount covering exploration or a fixed cash bonus as determined by the Secretary or both for provisions relating to straight royalty bids at not less than 12½ per centum with a cash bonus fixed by the Secretary, and added pars. (1)(C) to (H) and pars. (2) to (9).

Subsec. (b). Pub. L. 95-372, § 205(a), redesignated cls. (1) to (4) as pars. (1), (2), (3), and (6) respectively, added pars. (4), (5), and (7), and in par. (1) as so redesignated, added provisions authorizing the Secretary to lease tracts larger than 5760 acres if a larger area is necessary to comprise a reasonable economic production unit and in par. (2) as so redesignated, added provision to allow up to a 10 year initial period if the longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions, and in par. (3) as so redesignated, substituted "payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section" for "payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease".

Subsecs. (c) to (h). Pub. L. 95-372, § 205(b), added subsecs. (c) to (h). Former subsecs. (c) to (h) redesignated (i) to (n).

Subsec. (i). Pub. L. 95-372, § 205(b), redesignated former subsec. (c) as (i). Former subsec. (i) redesignated (o).

Subsec. (j). Pub. L. 95-372, § 205(b), redesignated former subsec. (d) as (j). Former subsec. (j), which provided that any person complaining of the cancellation of a lease by the Secretary could have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review, was struck out. See section 1349 of this title.

Subsecs. (k) to (o). Pub. L. 95-372, § 205(b), redesignated former subsecs. (e) to (i) as (k) to (o), respectively.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in

kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1331, 1343 of this title.

§ 1340. Geological and geophysical explorations

(a) Approved exploration plans

(1) Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area.

(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this subchapter.

(b) Oil and gas exploration

Except as provided in subsection (f) of this section, beginning ninety days after September 18, 1978, no exploration pursuant to any oil and gas lease issued or maintained under this subchapter may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

(c) Plan approval; State concurrence; plan provisions

(1) Except as otherwise provided in this subchapter, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this subchapter, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this subchapter, regulations prescribed under this subchapter, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 1334(a)(2)(A)(i) of this title, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 1334(a)(2)(B) of this title, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 1334(a)(2)(C)(i) or (ii) of this title.

(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 1455 of title 16, unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 1456(c)(3)(B)(i) or (ii) of title 16, or the Secretary of Commerce makes the finding authorized by section 1456(c)(3)(B)(iii) of title 16.

(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be understaken [1];

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled; and

(D) such other information deemed pertinent by the Secretary.

(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

(d) Drilling permit

The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

(e) Plan revisions; conduct of exploration activities

(1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

(f) Drilling permits issued and exploration plans approved within 90-day period after September 18, 1978

(1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after September 18, 1978, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 1334(a)(1)(B) of this title, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan.

(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c)(4) of this section, or to submit other information.

(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies.

(g) Determinations requisite to issuance of permits

Any permit for geological explorations authorized by this section shall be issued only if

[1] So in original. Probably should be "undertaken".

the Secretary determines, in accordance with regulations issued by the Secretary, that—

(1) the applicant for such permit is qualified;

(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this subchapter; and

(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

(h) Lands beneath navigable waters adjacent to Point Reyes Wilderness

The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 1301 of this title) of such State which are adjacent to such Wilderness.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 206, 92 Stat. 647.)

AMENDMENTS

1978—Pub. L. 95-372 designated existing provisions as subsec. (a)(1) and added subsec. (a)(2) and subsecs. (b) to (h).

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1352 of this title.

§ 1341. Reservation of lands and rights

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1353 of this title.

§ 1343. Annual report by Secretary to Congress

Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

(1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—

(A) a detailed accounting of all moneys received and expended;

(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

(C) a summary of management, supervision, and enforcement activities;

(D) a list of all shut-in and flaring wells; and

(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

(2) A report prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

(A) an evaluation of the competitive bidding systems permitted under the provisions of section 1337 of this title, and, if applicable, the reasons why a particular bidding system has not been utilized;

(B) an evaluation of alternative bidding systems not permitted under section 1337 of this title, and why such system or systems should or should not be utilized;

(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

(E) an evaluation of present measures and a description of additional measures dealing with supplies of oil and gas to independent refiners and distributors.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 207, 92 Stat. 648.)

AMENDMENTS

1978—Pub. L. 95-372 substituted provisions spelling out in detail the contents of reports to be filed with the President of the Senate and the Speaker of the House for provisions requiring only a single report detailing the amounts of all moneys received and expended in connection with the administration of this subchapter during the preceding fiscal year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1348 of this title.

§ 1344. Outer Continental Shelf leasing program

(a) Schedule of proposed oil and gas lease sales

The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this subchapter. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet na-

tional energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

(b) Estimates of appropriations and staff required for management of leasing program

The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this subchapter;

(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this subchapter and with section 4332(2)(C) of title 42; and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

(c) Suggestions from Federal agencies and affected State and local governments; submission of proposed program to Governors of affected States and Congress; publication in Federal Register

(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(3) Within nine months after September 18, 1978, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

(d) Comments by Attorney General on anticipated effect on competition; comments by State or local governments; submission of program to President and Congress; issuance of leases in accordance with program

(1) Within ninety days after the date of publication of a proposed leasing program, the At-

torney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following September 18, 1978, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this subchapter.

(e) Review, revision, and reapproval of program

The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed.

(f) Procedural regulations for management of program

The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 1454 or section 1455 of title 16.

Such procedures shall be applicable to any significant revision or reapproval of the leasing program.

(g) Information from public and private sources; confidentiality of classified or privileged data

The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this subchapter. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties.

(h) Information from all Federal departments and agencies; confidentiality of privileged or proprietary information

The heads of all Federal departments and agencies shall provide the Secretary with any nonpriviledged[1] or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

(Aug. 7, 1953, ch. 345, § 18, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 649.)

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1349 of this title.

§ 1345. Coordination and consultation with affected State and local governments

(a) Recommendations regarding size, time, or location of proposed lease sales

Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

[1] So in original. Probably should be "nonprivileged".

(b) Time for submission of recommendations

Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

(c) Acceptance or rejection of recommendations

The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this subchapter. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

(d) Finality of acceptance or rejection of recommendations

The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 1349 of this title, unless found to be arbitrary or capricious.

(e) Cooperative agreements

The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this subchapter and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 1352 of this title), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

(Aug. 7, 1953, ch. 345, § 19, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 652.)

§ 1346. Environmental studies

(a) Information for assessment and management of impacts on environment; time for study; impacts on marine biota from pollution or large spills

(1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after September 18, 1978, with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before September 18, 1978, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before September 18, 1978. The Secretary may utilize information collected in any study prior to September 18, 1978.

(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

(b) Additional studies subsequent to leasing and development of area

Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

(c) Procedural regulations for conduct of studies; cooperation with affected States; utilization of information from Federal, State and local governments and agencies

The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

(d) Consideration of relevant environmental information in developing regulations, lease conditions and operating orders

The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

(e) Assessment of cumulative effects of activities on environment; submission to Congress

As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this subchapter on the human, marine, and coastal environments.

(f) Utilization of capabilities of Department of Commerce

In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this subchapter.

(Aug. 7, 1953, ch. 345, § 20, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 653.)

§ 1347. Safety and health regulations

(a) Joint study of adequacy of existing safety and health regulations; submission to President and Congress

Upon September 18, 1978, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.

(b) Use of best available and safest economically feasible technologies

In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 1333(a)(1) of this title, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(c) Regulations applying to unregulated hazardous working conditions

The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.

(d) Application of other laws

Nothing in this subchapter shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.

(e) Studies of underwater diving techniques and equipment

The Secretary of Commerce, in cooperation with the Secretary of the Department in which the Coast Guard is operating, and the Director of the National Institute of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety and improvement of diver performance. Such studies shall include, but need not be limited to, decompression and excursion table development and improvement and all aspects of diver physiological restraints and protective gear for exposure to hostile environments.

(f) Coordination and consultation with Federal departments and agencies; availability to interested persons of compilation of safety regulations

(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

(Aug. 7, 1953, ch. 345, § 21, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 654.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1334, 1348 of this title.

§ 1348. Enforcement of safety and environmental regulations

(a) Utilization of Federal departments and agencies

The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this subchapter. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

(b) Duties of holders of lease or permit

It shall be the duty of any holder of a lease or permit under this subchapter to—

(1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) Onsite inspection of facilities

The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this subchapter, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

(d) Investigation and report on major fires, oil spills, death, or serious injury

(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this subchapter, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases or permits issued or maintained under this subchapter shall cooperate with the appropriate Secretary in the course of any such investigation.

(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this subchapter, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this subchapter shall cooperate with the appropriate Secretary in the course of any such investigation.

(e) Review of allegations of violations

The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this subchapter.

(f) Summoning of witnesses and production of evidence

In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

(g) Report to Congress of violations and action taken

The Secretary shall, after consultation with the Secretary of the Department in which the Coast Guard is operating, include in his annual report to the Congress required by section 1343 of this title the number of violations of safety regulations reported or alleged, any investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations, and the results of the diving studies conducted under section 1347(e) of this title.

(Aug. 7, 1953, ch. 345, § 22, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 655.)

REPORT AND RECOMMENDATIONS BY SECRETARY TO CONGRESS FOR TRAINING PROGRAM

Pub. L. 95-372, title VI, § 607, Sept. 18, 1978, 92 Stat. 697, required the Secretary of the Interior, in consultation with the Secretary of the Department in which the Coast Guard is operating, not later than ninety days after Sept. 18, 1978, to prepare and submit to the Congress a training program report concerning individuals employed on any artificial island, installation, or other device located on the Outer Continental Shelf and who, as part of their employment, operate or supervise the operation of pollution-prevention equipment.

§ 1349. Citizens suits, jurisdiction and judicial review

(a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security

(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subchapter against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this subchapter or any regulation promulgated under this subchapter; or of the terms of any permit or lease issued by the Secretary under this subchapter.

(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this subchapter, or any regulation promulgated under this subchapter, or the terms of any permit or lease issued by the Secretary under this subchapter, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

(b) Jurisdiction and venue of actions

(1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this subchapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

(c) Review of Secretary's approval of leasing program; review of approval, modification or disapproval of exploration or production plan; persons who may seek review; scope of review; certiorari to Supreme Court

(1) Any action of the Secretary to approve a leasing program pursuant to section 1344 of this title shall be subject to judicial review only in the United States Court of Appeal[1] for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this subchapter shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this subchapter and any additional information upon which the Secretary based his decision, as required by section 2112 of title

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[1] So in original. Probably should be "Appeals".

28. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

(d) Expedition of actions

Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

(Aug. 7, 1953, ch. 345, § 23, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 657.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1345 of this title.

§ 1350. Remedies and penalties

(a) Injunctions, restraining orders, etc.

At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this subchapter, any regulation or order issued under this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter.

(b) Civil penalties; hearing

If any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(c) Criminal penalties

Any person who knowingly and willfully (1) violates any provision of this subchapter, any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under the authority of this subchapter designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this subchapter, or (4) reveals any data or information required to be kept confidential by this subchapter shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(d) Liability of corporate officers and agents for violations by corporation

Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

(e) Concurrent and cumulative nature of penalties

The remedies and penalties prescribed in this subchapter shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this subchapter shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(Aug. 7, 1953, ch. 345, § 24, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 659.)

§ 1351. Oil and gas development and production

(a) Development and production plans; submission to Secretary; statement of facilities and operation; submission to Governors of affected States and local governments

(1) Prior to development and production pursuant to an oil and gas lease issued after September 18, 1978, in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to September 18, 1978, in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to September 18, 1978, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary, for approval pursuant to this section.

(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

(b) Development and production activities in accordance with plan as lease requirement

After September 18, 1978, no oil and gas lease may be issued pursuant to this subchapter in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

(c) Scope and contents of plan

A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

(1) the specific work to be performed;

(2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

(4) all safety standards to be met and how such standards are to be met;

(5) an expected rate of development and production and a time schedule for performance; and

(6) such other relevant information as the Secretary may by regulation require.

(d) State concurrence in land or water zone use in coastal zone of State

The Secretary shall not grant any license or permit for any activity described in detail in a plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act [16 U.S.C. 1456(c)(3)(B)(i) or (ii)], or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act [16 U.S.C. 1456(c)(3)(B)(iii)].

(e) Declaration of approval of development and production plan as major Federal action; submission of preliminary or final lease plans prior to commencement of National Environmental Policy provisions procedures

(1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall commence.

(f) Plans considered major Federal actions; submission of draft environmental impact statement to Governors of affected States and local governments

If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

(g) Plans considered nonmajor Federal actions; comments and recommendations from States

If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to the Secretary, the executive of any affected local government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

(h) Approval, disapproval or modification of plan; reapplication; periodic review

(1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsec-

tion (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act [16 U.S.C. 1456(c)(3)(B)(i) or (ii)] unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act [16 U.S.C. 1456(c)(3)(B)(iii)]. The Secretary shall disapprove a plan—

(A) if the lessee fails to demonstrate that he can comply with the requirements of this subchapter or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title;

(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act [16 U.S.C. 1456(c)(3)(B)(i) or (ii)] and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act [16 U.S.C. 1456(c)(3)(B)(iii)];

(C) if operations threaten national security or national defense; or

(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

(2)(A) If a plan is disapproved—

(i) under subparagraph (A) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

(B) If a plan is disapproved—

(i) under subparagraph (C) or (D) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.], and such approval occurs after the lessee has submitted a plan to the Secretary,

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 1334(a)(2)(C) of this title. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compensation, under the provisions of section 1334(c) of this title.

(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

(i) Approval of revision of approved plan

The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this subchapter, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.

(j) Cancellation of lease on failure to submit plan or comply with approved plan

Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with section 1334(c) and (d) of this title. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

(k) Production and transportation of natural gas; submission of plan to Federal Energy Regulatory Commission; impact statement

If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 717f of title 15, may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

(l) Application of provisions to leases in Gulf of Mexico

The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this subchapter, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 1333(a)(2) of this title.

(Aug. 7, 1953, ch. 345, § 25, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 659.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (e)(2), (h)(1), (k), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (h)(2)(A)(ii), (B)(ii), is title III of Pub. L. 89-454, as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

§ 1352. Oil and gas information program

(a) Access to data and information obtained by lessee or permittee from oil or gas exploration, etc., data obtained by Federal department or agency from geological and geophysical explorations

(1)(A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this subchapter shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

(C) Whenever any data and information is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(ii) by a lessee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information;

(iii) by a permittee, in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing; and

(iv) by a permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay such permittee the reasonable cost of processing and reproducing such data and information for the Secretary,

pursuant to such regulations as he may prescribe.

(2) Each Federal department and agency shall provide the Secretary with any data ob-

tained by such Federal department or agency pursuant to section 1340 of this title, and any other information which may be necessary or useful to assist him in carrying out the provisions of this subchapter.

(b) Processing, analyzing, and interpreting information; availability of summary of data to affected States and local government

(1) Data and information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this subchapter.

(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States, and upon request, to any affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

(c) Confidentiality of information; regulations

The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

(d) Transmittal of information to affected State; protection of competitive position

(1) The Secretary shall transmit to any affected State—

(A) an index, and upon request copies of, all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this subchapter, but no information transmitted by the Secretary under this subsection shall identify any particular tract with the name or names of any particular party so as not to compromise the competitive position of any party or parties participating in the nominations;

(B)(i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this section, unless the Secretary determines that transmittal of such data prepared pursuant to subsection (b)(1) of this section would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(e) Agreement with State to waive defenses and hold United States harmless from failure to maintain confidentiality of information

Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f)(2) of this section, and to hold the United States harmless from any violations of the regulations prescribed pursuant to subsection (c) of this section that the State or its employees may commit.

(f) Civil action against United States or State for failure to maintain confidentiality of information; certain defenses unavailable

(1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

(g) Preemption of State law by Federal law

Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this subchapter is expressly preempted by the provisions of this section, to the extent that it applies to such information.

(h) Failure by State to comply with regulations; withholding of information

If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

(Aug. 7, 1953, ch. 345, § 26, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 664.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1345 of this title.

§ 1353. Federal purchase and disposition of oil and gas

(a) Payment of royalties or net profit shares in oil and gas; purchase of oil and gas by United States; transfer of title to Federal agencies

(1) Except as may be necessary to comply with the provisions of sections 1335 and 1336 of this title, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease issued or maintained in accordance with this subchapter, shall, on demand of the Secretary, be paid in oil or gas.

(2) The United States shall have the right to purchase not to exceed 16⅔ per centum by volume of the oil and gas produced pursuant to a lease issued or maintained in accordance with this subchapter, at the regulated price, or, if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

(b) Sale of oil by United States to public; disposition of oil to small refiners; application of other laws

(1) The Secretary, except as provided in this subsection, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value, any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with the Secretary of Energy, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this subchapter, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any allocation or lottery sale to assure such access and shall publish notice of such allocation or sale, and the terms thereof, at least thirty days in advance. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

(3) The Secretary may only sell or otherwise dispose of oil described in paragraph (1) of this subsection in accordance with any provision of law, or regulations issued in accordance with such provisions, which provide for the Secretary of Energy to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

(c) Sale of gas by United States to public

(1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, many[1] offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with and advice from the Secretary of Energy, the Federal Energy Regulatory Commission determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this section, the Secretary of the Interior may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocation or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to selling or allocating any gas pursuant to this subsection, the Secretary shall consult with the Federal Energy Regulatory Commission.

(d) Purchase by lessee of Federal oil or gas for which no bids received

The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a)(3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if

[1] So in original. Probably should be "may".

no regulated price applies, the fair market value of the oil or gas so obtained.

(e) Definitions

As used in this section—

(1) the term "regulated price" means the highest price—

(A) at which oil many[1] be sold pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] and any rule or order issued under such Act;

(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act [15 U.S.C. 717 et seq.], any other Act, regulations governing natural gas pricing, or any rule or order issued under any such Act or any such regulations; or

(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas; and

(2) the term "small refiner" has the meaning given such term by Small Business Administration Standards 128.3-8(d) and (g), as in effect on September 18, 1978, or as thereafter revised or amended.

(f) Purchase of oil and gas in time of war

Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf as provided by section 1341(b) of this title.

(Aug. 7, 1953, ch. 345, § 27, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 666.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (e)(1)(A), is Pub.L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

The Natural Gas Act, referred to in subsec. (e)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of that Act to the Code, see section 717w of Title 15 and Tables.

§ 1354. Limitations on export of oil or gas

(a) Application of Export Administration provisions

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

[1] So in original. Probably should be "may".

(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President

The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

(Aug. 7, 1953, ch. 345, § 28, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 668.)

REFERENCES IN TEXT

The Export Administration Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, App., War and National Defense, and which terminated on Sept. 30, 1979, pursuant to the terms of that Act.

§ 1355. Restrictions on employment of former officers or employees of the Department of the Interior

No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this subchapter, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall—

(1) within two years after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

(C) knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a

ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

(2) within one year after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

(Aug. 7, 1953, ch. 345, § 29, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 668.)

REFERENCES IN TEXT

GS-16 of the General Schedule, referred to in provision preceding par. (1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

§ 1356. Documentary, registry and manning requirements

(a) Regulations

Within six months after September 18, 1978, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

(1) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this subchapter and which is built or rebuilt at any time after such one-year period, when required to be documented by the laws of the United States, be documented under the laws of the United States;

(2) which is used for activities pursuant to this subchapter, comply, except as provided in subsection (b) of this section, with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

(3) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this subchapter, be manned or crewed, except as provided in subsection (c) of this section, by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

(b) Exceptions from design, construction, alteration, and repair requirements

The regulations issued under subsection (a)(2) of this section shall not apply to any vessel, rig, platform, or other vehicle or structure built prior to September 18, 1978, until such time after such date as such vehicle or structure is rebuilt.

(c) Exceptions from manning requirements

The regulations issued under subsection (a)(3) of this section shall not apply—

(1) to any vessel, rig, platform, or other vehicle or structure if—

(A) specific contractual provisions or national registry manning requirements in effect on September 18, 1978, provide to the contrary;

(B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work; or

(C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest; and

(2) to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas.

(Aug. 7, 1953, ch. 345, § 30, added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 669.)

CHAPTER 31—DEPARTMENT OF THE INTERIOR

§ 1453. Assistant Secretaries of the Interior

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Audit and Investigation in the Department of Interior were transferred to the Office of Inspector General in the Department of Interior, as established by section 9(a)(1)(D) of the Inspector General Act of 1978, Pub.L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1456a. Repealed. Pub. L. 95-164, title III, § 306(b), Nov. 9, 1977, 91 Stat. 1322

Section, Pub. L. 93-153, title IV, § 405, Nov. 16, 1973, 87 Stat. 590, provided for the appointment by the President of the head of the Mining Enforcement and Safety Administration.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of Title 30, Mineral Lands and Mining.

§ 1457. Duties of Secretary

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior, the Department of the Interior, and the officers and components of the Department of the Interior exercised by the Bureau of Mines relating to fuel supply and demand analysis and data gathering, research and development relating to increased efficiency of production technology of solid fuel minerals other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining, and coal preparation and analysis were transferred to the Secretary of Energy by section 7152(d) of Title 42, The Public Health and Welfare.

The power marketing functions of the Bureau of Reclamation, including construction, operation, and maintenance of transmission lines and attendant facilities, were transferred to the Secretary of Energy by section 7152(a)(1)(E), (3) of Title 42, The Public Health and Welfare, and are to be exercised by the Secretary through a separate Administration within the Department of Energy.

REPORT TO CONGRESS ON AVAILABILITY OF FEDERAL PROGRAMS TO TERRITORIES OF UNITED STATES; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95-134, title IV, § 401, Oct. 15, 1977, 91 Stat. 1163, directed the Secretary of the Interior to submit to the Congress no later than Jan. 1, 1978, a report on Federal programs available to United States territories and authorized an appropriation of $50,000 for fiscal year 1978.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of the Interior, see Parts 1, 7, and 30 of Ex. Ord. No. 11490, eff. Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

§ 1465. Annual reports of department and its bureaus

CHANGE OF NAME

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

CHAPTER 32—COLORADO RIVER BASIN PROJECT

SUBCHAPTER II—INVESTIGATIONS AND PLANNING

§ 1511. Reconnaissance investigations by Secretary of the Interior; reports; 10 year moratorium on water importation studies

Pursuant to the authority set out in the Reclamation Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto, and the provisions of the Water Resources Planning Act of July 22, 1965, 79 Stat. 244, as amended [42 U.S.C. 1962 et seq.], with respect to the coordination of studies, investigations and assessments, the Secretary of the Interior shall conduct full and complete reconnaissance investigations for the purpose of developing a general plan to meet the future water needs of the Western United States. Such investigations shall include the long-range water supply available and the long-range water requirements in each water resource region of the Western United States. Progress reports in connection with these investigations shall be submitted to the President, the National Water Commission (while it is in existence), the Water Resources Council, and to the Congress every two years. The first of such reports shall be submitted on or before June 30, 1971, and a final reconnaissance report shall be submitted not later than June 30, 1977: *Provided*, That for a period of ten years from November 2, 1978, the Secretary shall not undertake reconnaissance studies of any plan for the importation of water into the Colorado River Basin from any other natural river drainage basin lying outside the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are in the natural drainage basin of the Colorado River.

(As amended Pub. L. 95-578, § 10, Nov. 2, 1978, 92 Stat. 2472.)

AMENDMENTS

1978—Pub. L. 95-578 substituted "November 2, 1978" for "September 30, 1968".

SUBCHAPTER III—AUTHORIZED UNITS; PROTECTION OF EXISTING USES

§ 1524. Water furnished from Central Arizona Project

[*See main edition for text of (a) to (f)*]

(g) Omitted

[*See main edition for credits*]

CODIFICATION

Former subsec. (g) of this section, which restricted the use of water from the projects authorized by this chapter for the production of basic agricultural commodities on newly irrigated lands for a period of ten years from Sept. 30, 1968, was omitted from the Code as executed.

CHAPTER 33—ALASKA NATIVE CLAIMS SETTLEMENT

Sec.
1628. Assignments by Regional Corporations of rights to receive payments from Fund [New].
(a) Recognition by Secretary; scope of recognition.
(b) Nonrecognition by Secretary.
(c) Claims against Secretary by stockholders of Regional or Village Corporation for recognition of assignment.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 3371; title 16 section 470bb; title 25 sections 450b, 1452, 1603, 1801, 2019; title 29 sections 750, 872; title 30 section 1306; title 33 section 1263; title 42 sections 2991b, 2992c, 3002, 4762, 6502.

§ 1602. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1615 of this title; title 25 sections 472a, 1903, 2011; title 42 section 300*l*-2.

§ 1606. Regional Corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1604, 1605, 1607, 1618, 1620, 1627, 1628 of this title; title 25 section 1903; title 42 section 1382b.

§ 1611. Native land selections

SEPARABILITY OF PROVISIONS

Pub. L. 95–178, § 3(b), Nov. 15, 1977, 91 Stat. 1370, provided that: "If any provision of this Act [enacting section 1628 of this title, amending sections 1613 and 1615 of this title, and amending provisions set out as a note under this section] or the applicability thereof is held invalid, the validity of the remainder of this Act, of section 12 of the Act of January 2, 1976 (Public Law 94–204), as amended [set out as a note below], of the document referred to in section 12(b) thereof, and the duties and obligations of the Secretary of the Interior, the State of Alaska, and Cook Inlet Region, Incorporated, with respect thereto, shall not be affected thereby."

SETTLEMENT OF CLAIMS AND CONSOLIDATION OF OWNERSHIP AMONG THE UNITED STATES, THE COOK INLET REGION, INC. AND THE STATE OF ALASKA

Pub. L. 94–204, § 12, Jan. 2, 1976, 89 Stat. 1150, as amended by Pub. L. 94–456, § 3, Oct. 4, 1976, 90 Stat. 1935; Pub. L. 95–178, § 3(a), Nov. 15, 1977, 91 Stat. 1369; Pub. L. 96–55, § 2, Aug. 14, 1979, 93 Stat. 386, provided that:

[*See main edition for text of* (a)]

"(b) The Secretary shall make the following conveyances to the Region, in accordance with the specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the document entitled 'Terms and Conditions for Land Consolidation and Management in Cook Inlet Area', which was submitted to the House Committee on Interior and Insular Affairs on December 10, 1975, and clarified on August 31, 1976, the terms of which, as clarified, are hereby incorporated herein and ratified as to the duties and obligations of the United States and the Region, as a matter of Federal law.

"(1) title to approximately 10,240 acres of land within the Kenai National Moose Range; except that there shall be no conveyance of the bed of Lake Tustamena, or the mineral estate in the waterfront zone described in the document referred to in this subsection;

[*See main edition for text of* (2) *to* (6), *undesignated par., and pars.* (i) *and* (ii)]

"There shall be established a buffer zone outside the withdrawals described in subparagraphs (i) and (ii) which zone shall extend one township from any such section 11(a)(3) [section 1610(a)(3) of this title] withdrawal and one and one-half townships from any section 11(a)(1) [section 1610(a)(1) of this title], withdrawal. Any nomination of a township within such zone shall be subject to the consent of the Region, or of the Village Corporation if adjacent to a section 11(a)(1) [section 1610(a)(1) of this title], withdrawal: *Provided, however,* That the affected Regional Corporation may designate additional lands to be included by substitution in the buffer zone so long as the buffer zone location is no greater than two townships in width and the total acreage of the buffer zone is not enlarged. The affected Regional Corporation shall designate the enlarged buffer zone, if any, no later than six months following the passage of this Act [Jan. 2, 1976]. Any use or development by the Region of land conveyed under this paragraph shall give due protection to the existing subsistence uses of such lands by the residents of the area; and no easement across Village Corporation lands to lands conveyed under this paragraph shall be established without the consent of the said Village Corporation or Corporations.

"Any provision of law to the contrary notwithstanding, if the Region, the Secretary, and/or the Administrator of General Services do not complete the nomination of lands referred to in subparagraphs (5) and (6) of this subsection by the dates set in subparagraphs I(C)(1)(b) and I(C)(2)(a) of the document referred to in this subsection, then, and in that event, these dates shall hereby automatically be extended by operation of this subsection for eighteen months. If these dates are hereby extended, the Secretary shall report to Congress at least thirty days prior to the occurrence of each such date as extended concerning the need for further remedial legislation.

"Any provision of law to the contrary notwithstanding, the United States shall accept upon tender the State Deed of Title, including the State's legal descriptions, for lands to be reconveyed to the Cook Inlet Region, Incorporated, pursuant to subsection (a)(1) of this section without requiring further survey prior to acceptance. Unless the boundaries of such lands have been specifically identified in a survey approved by the State or Federal Government, such lands shall be described by a metes and bounds description, or by aliquot parts of the Federal rectangular survey system, based wherever possible upon the Federal surveys initially performed to effect transfer and patent of said lands to the State of Alaska. Upon acceptance of a State Deed of Title said lands are hereby withdrawn from entry under the public land laws. Within sixty days the Secretary shall, without adjudication, issue conveyance to said lands of the interests conveyed by the State subject to any lawful reservations of rights or conditions contained in such State conveyance, as provided in the Terms and Conditions document, to Cook Inlet Region, Incorporated, with patent to issue thereafter immediately following approval of survey. The Secretary is authorized hereby to identify and reserve within two years after initial conveyance any easement he could have lawfully reserved prior to conveyance, and to issue immediately thereafter a revised conveyance reflecting such reservation, subject to the agreement of January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Incorporated, and certain of the villages contained therein. The Secretary may initiate such easement identification and reservation procedure before the tender of the State Deed of Title, but initiation of such procedure shall not affect the timely issuance of conveyance by the Secretary as provided hereby.

"Any provision of law to the contrary notwithstanding, if the Region, the Secretary, and/or the Administrator of General Services do not complete the nomination of lands referred to in subparagraphs (5) and (6) of this subsection by the dates set in subparagraphs I(C)(1)(b) and I(C)(2)(a) of the document referred to in this subsection, then, and in that event, these dates shall hereby automatically be extended by operation of this subsection for twelve months beyond the period set in section 3(a) of Public Law 95–178 [which enacted unlettered paragraphs of this subsection].

[*See main edition for text of* (c) *to* (i)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1613, 1616, 1620, 1621, 1627 of this title.

§ 1613. Conveyance of lands

[*See main edition for text of* (a) *to* (g)]

(h) Authorization of land conveyances

The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the

areas withdrawn by sections 1610 and 1615 of this title, and[1] follows:

[See main edition for text of (1) to (7)]

(8)(A) Any portion of the 2 million acres not conveyed by this subsection shall be allocated and conveyed to the Regional Corporations on the basis of population.

(B) Such allocation as the Regional Corporation for southeastern Alaska shall receive under this paragraph shall be selected and conveyed from lands that were withdrawn by sections 1615(a) and 1615(d) of this title and not selected by the Village Corporations in southeastern Alaska; except lands on Admiralty Island in the Angoon withdrawal area and, without the consent of the Governor of the State of Alaska or his delegate, lands in the Saxman and Yakutat withdrawal areas are not available for selection or conveyance under this paragraph.

(As amended Pub. L. 95-178, § 2, Nov. 15, 1977, 91 Stat. 1369.)

AMENDMENTS

1977—Subsec. (h)(8). Pub. L. 95-178 designated existing provisions as subpar. (A) and added subpar. (B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1611, 1615, 1617, 1618, 1620, 1621, 1627 of this title.

§ 1615. Withdrawal and selection of public lands; funds in lieu of acreage

[See main edition for text of (a)]

(b) Native land selections; Village Corporations for listed Native villages; acreage; proximity of selections; conformity to Lands Survey System

During a period of three years from December 18, 1971, each Village Corporation for the villages listed in subsection (a) of this section shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such townships. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Lands Survey System.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 95-178, § 1, Nov. 15, 1977, 91 Stat. 1369.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-178 struck out provisions relating to allocations received by the Regional Corporation for the southeastern Alaska region under section 1613(h)(8) of this title and selection and conveyance of such allocated lands.

§ 1616. Joint Federal-State Land Use Planning Commission for Alaska

(a), (b) Omitted

[See main edition for text of (c) and (d); credits]

[1] So in original. Probably should be "as".

CODIFICATION

Former subsecs. (a) and (b) of this section, which related to the establishment, membership, compensation, procedures, duties and powers of the Joint Federal-State Land Use Planning Commission for Alaska and authorized the Commission to identify public easements across selected lands in Alaska, were omitted from the Code pursuant to former subsec. (a)(10) of this section which provided that the Commission was to cease to exist effective June 30, 1979.

§ 1620. Taxation

[See main edition for text of (a) to (f)]

(g) Resource information or analysis; professional or technical services

In the case of any Native Corporation established pursuant to this chapter, income for purposes of any form of Federal, State, or local taxation shall not be deemed to include the value of—

(1) the receipt, acquisition, or use of any resource information or analysis (including the receipt of any right of access to such information or analysis) relating to lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this chapter;

(2) the promise or performance by any person or by any Federal, State, or local government agency of any professional or technical services relating to the resources of lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this chapter, including, but not limited to, services in connection with exploration on such lands for oil, gas, or other minerals; and

(3) the expenditure of funds, incurring of costs, or the use of any equipment or supplies by any person or any Federal, State, or local government agency, or any promise, agreement, or other arrangement by such person or agency to expend funds or use any equipment or supplies for the purpose of creating, developing, or acquiring the resource information or analysis described in paragraph (1) or for the purpose of performing or otherwise furnishing the services described in paragraph (2): *Provided*, That this paragraph shall not apply to any funds paid to a Native Corporation established pursuant to this chapter or to any subsidiary thereof.

This subsection shall be effective as of December 18, 1971, and, with respect to each Native Corporation, shall remain in full force and effect for a period of twenty years thereafter or until the Corporation has received conveyance of its full land entitlement, whichever first occurs. Except as set forth in this subsection and in subsection (d) of this section all rents, royalties, profits, and other revenues or proceeds derived from real property interests selected and conveyed pursuant to sections 1611 and 1613 of this title shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(h) Date of incorporation as date of trade or business; ordinary and necessary expenses

(1) Notwithstanding any other provision of law, each Native Corporation established pursuant to this chapter shall be deemed to have become engaged in carrying on a trade or business as of the date it was incorporated for purposes of any form of Federal, State, or local taxation.

(2) All expenses heretofore or hereafter paid or incurred by a Native Corporation established pursuant to this chapter in connection with the selection or conveyance of lands pursuant to this chapter, or in assisting another Native Corporation within or for the same region in the selection or conveyance of lands under this chapter, shall be deemed to be or to have been ordinary and necessary expenses of such Corporation, paid or incurred in carrying on a trade or business for purposes of any form of Federal, State, or local taxation.

(i) Personal Holding Company Act exemption

No Corporation created pursuant to this chapter shall be considered to be a personal holding company within the meaning of section 542(a) of title 26 prior to January 1, 1992.

(As amended Pub. L. 95-600, title V, § 541, Nov. 6, 1978, 92 Stat. 2887.)

AMENDMENTS

1978—Subsecs. (g) to (i). Pub. L. 95-600 added subsecs. (g) to (i).

§ 1628. Assignments by Regional Corporations of rights to receive payments from Fund

(a) Recognition by Secretary; scope of recognition

Notwithstanding the provision of section 203 of title 31, the Secretary is authorized to recognize validly executed assignments made by Regional Corporations of their rights to receive payments from the Alaska Native Fund. Such assignments shall only be recognized to the extent that the Regional Corporation involved is not required to distribute funds pursuant to subsection (j) or (m) of section 1606 of this title.

(b) Nonrecognition by Secretary

The Secretary shall not recognize any assignment under this section which does not provide that the United States reserves the right to assert against the assignee and successors of the assignee, any setoff or counterclaim which the United States has against the assignor Corporation.

(c) Claims against Secretary by stockholders of Regional or Village Corporation for recognition of assignment

No stockholder of any Regional or Village Corporation shall have any claim against the Secretary or the United States as the result of any assignment duly recognized by the Secretary pursuant to this section.

(Pub. L. 92-203, § 31, as added Pub. L. 95-178, § 4, Nov. 15, 1977, 91 Stat. 1370.)

CHAPTER 34—TRANS-ALASKA PIPELINE

§ 1651. Congressional findings and declaration

NORTH SLOPE CRUDE OIL; REPORT ON EQUITABLE ALLOCATION; TERMINATION

Pub. L. 94-586, § 18, Oct. 22, 1976, 90 Stat. 2916, provided that: "Within 6 months of the date of enactment of this Act [Oct. 22, 1976], the President shall determine what special expediting procedures are necessary to insure the equitable allocation of north slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio (hereinafter referred to as the 'Northern Tier States') to carry out the provisions of section 410 of Public Law 93-153 [set out below] and shall report his findings to the Congress. In his report, the President shall identify the specific provisions of law, which relate to any determination of a Federal officer or agency as to whether to issue or grant a certificate, permit, right-of-way, lease, or other authorization in connection with the construction of an oil delivery system serving the Northern Tier States and which the President finds would inhibit the expeditious construction of such a system in the contiguous States of the United States. In addition the President will include in his report a statement which demonstrates the impact that the delivery system will have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports. Furthermore, all Federal officers and agencies shall, prior to the submission of such report and further congressional action relating thereto, expedite to the fullest practicable extent all applications and requests for action made with respect to such an oil delivery system."

Section 18 of Pub. L. 94-586 to terminate in event no decision of the President takes effect under section 719f of title 15, the termination to occur at end of last day on which a decision could be, but is not approved under such section, under provision of section 20 of Pub. L. 94-586, set out as a note under section 719 of Title 15, Commerce and Trade.

TRANS-CANADA PIPELINE; NEGOTIATIONS WITH CANADA; FEASIBILITY STUDY

Title III of Pub. L. 93-153 provided that:

"SEC. 301. The President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine—

"(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States, including the use of tankers by way of the Northwest Passage;

"(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

"(c) the terms and conditions under which pipelines or other transportation systems could be constructed across Canadian territory;

"(d) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met;

"(e) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit; and

"(f) the feasibility, consistent with the needs of other sections of the United States, of acquiring additional energy from other sources that would make

unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area.

The President shall report to the House and Senate Committees on Interior and Insular Affairs the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

"SEC. 302. (a) The Secretary of the Interior is authorized and directed to investigate the feasibility of one or more oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that will deliver oil or gas to United States markets.

"(b) All costs associated with making the investigations authorized by subsection (a) shall be charged to any future applicant who is granted a right-of-way for one of the routes studied. The Secretary shall submit to the House and Senate Committees on Interior and Insular Affairs periodic reports of his investigation, and the final report of the Secretary shall be submitted within two years from the date of this Act [Nov. 16, 1973].

"SEC. 303. Nothing in this title shall limit the authority of the Secretary of the Interior or any other Federal official to grant a gas or oil pipeline right-of-way or permit which he is otherwise authorized by law to grant."

EXCLUSION OF PERSONS FROM TRANS-ALASKA PIPELINE ACTIVITIES ON BASIS OF RACE, CREED, COLOR, NATIONAL ORIGIN, OR SEX PROHIBITED

Section 403 of Pub. L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]."

EQUITABLE ALLOCATION OF NORTH SLOPE CRUDE OIL

Section 410 of Pub. L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

§ 1652. Authorizations for construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title; title 50 App. section 2406.

CHAPTER 35—FEDERAL LAND POLICY AND MANAGEMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1903 of this title; title 16 section 79b.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1702. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1902 of this title.

SUBCHAPTER II—LAND USE PLANNING AND LAND ACQUISITION AND DISPOSITION

§ 1711. Continuing inventory and identification of public lands; preparation and maintenance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1782, 1901, 1903 of this title.

§ 1712. Land use plans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1713, 1732, 1752, 1781, 1901, 1903, 1904 of this title; title 16 section 1333.

§ 1716. Exchanges of public lands or interests therein within the National Forest System

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715, 1718, 1719 of this title; title 30 sections 193, 1260.

§ 1719. Mineral interests; reservation and conveyance requirements and procedures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 193.

§ 1721. Conveyances of public lands to States, local governments, etc.

REFERENCES IN TEXT

The Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), referred to in subsec. (f), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, known as the Forest and Rangelands Renewable Resources Planning Act of 1974, which is classified generally to subchapter I (§ 1600 et seq.) chapter 36 of Title 16, Conservation. The provisions of such Act defining the lands within the National Forest System are set out in section 1609 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of Title 16 and Tables.

SUBCHAPTER III—ADMINISTRATION

§ 1732. Management of use, occupancy, and development of public lands

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect preconstruction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1734. Fees, charges, and commissions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2005 of this title.

§ 1739. Advisory councils

(a) Establishment; membership; operation

The Secretary shall establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770).

[*See main edition for text of* (b) *to* (e)]

(As amended Pub. L. 95-514, § 13, Oct. 25, 1978, 92 Stat. 1808.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514 substituted in first sentence "shall establish" for "is authorized to establish".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1781, 1904 of this title.

§ 1747. Loans to States and political subdivisions; purposes; amounts; allocation; terms and conditions; interest rate; security; limitations; forebearance for benefit of borrowers; recordkeeping requirements; discrimination prohibited; deposit of receipts

(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended [30 U.S.C. 181 et seq.]. Such loans shall be confined to the uses specified for the 50 per centum of mineral leasing revenues to be received by such States and subdivisions pursuant to section 35 of such Act [30 U.S.C. 191].

(2) The total amount of loans outstanding pursuant to this section for any State and political subdivisions thereof in any year shall be not more than the anticipated mineral leasing revenues to be received by that State pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], for the ten years following.

(3) The Secretary, after consultation with the Governors of the affected States, shall allocate such loans among the States and their political subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(4) Loans made pursuant to this section shall be subject to such terms and conditions as the Secretary determines necessary to assure the achievement of the purpose of this section. The Secretary shall promulgate such regulations as may be necessary to carry out the provisions of this section no later than three months after August 20, 1978.

(5) Loans made pursuant to this section shall bear interest equivalent to the lowest interest rate paid on an issue of at least $1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.

(6) Any loan made pursuant to this section shall be secured only by a pledge of the revenues received by the State or the political subdivision thereof pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], and shall not constitute an obligation upon the general property or taxing authority of such unit of government.

(7) Notwithstanding any other provision of law, loans made pursuant to this section may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under this section.

(8) Nothing in this section shall be construed to preclude any forebearance for the benefit of the borrower including loan restructuring, which may be determined by the Secretary as justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made pursuant to this section.

(9) Recipients of loans made pursuant to this section shall keep such records as the Secretary shall prescribe by regulation, including records which fully disclose the disposition of the proceeds of such assistance and such other records as the Secretary may require to facilitate an effective audit. The Secretary and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records.

(10) No person in the United States shall, on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or part with funds made available under this section.

(11) All amounts collected in connection with loans made pursuant to this section, including interest payments or repayments of principal on loans, fees, and other moneys, derived in connection with this section, shall be deposited in the Treasury as miscellaneous receipts.

(As amended Pub. L. 95-352, § 1(f), Aug. 20, 1978, 92 Stat. 515.)

REFERENCES IN TEXT

The Act of February 25, 1920, as amended, referred to in par. (1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, popularly known as the Mineral Leasing Act of 1920, which is classified generally to sub-

chapters I to VII (§ 181 et seq.) of chapter 3A of Title 30, Mineral Lands and Mining. Section 35 of such Act, also referred to in pars. (1), (2), and (6), is classified to section 191 of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

AMENDMENTS

1978—Pars. (1) and (2). Pub. L. 95-352 redesignated former par. (1) as pars. (1) and (2), and in par. (1), as redesignated, struck out provisions establishing interest rate requirements, and in par. (2), as redesignated, struck out exception for Alaska and requirements for repayment. Former par. (2) redesignated par. (3).

Par. (3). Pub. L. 95-352 redesignated par. (2) as par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 95-352 redesignated par. (3) as par. (4).

Pars. (5) to (11). Pub. L. 95-352 added pars. (5) to (11).

§ 1748. Funding requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1904 of this title; title 16 section 670o.

SUBCHAPTER IV—RANGE MANAGEMENT

§ 1751. Grazing fees; feasibility study; contents; submission of report; annual distribution and use of range betterment funds; nature of distributions

[*See main edition for text of* (a)]

(b)(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or $10,000,000 per annum, whichever is greater of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the sixteen contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42.

[*See main edition for text of* (2)]

(As amended Pub. L. 95-514, § 6(b), Oct. 25, 1978, 92 Stat. 1806.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-514 inserted "or $10,000,000 per annum, whichever is greater" following "50 per centum" and substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

MORATORIUM ON INCREASE OF GRAZING FEE FOR 1978 GRAZING YEAR

Pub. L. 95-321, July 21, 1978, 92 Stat. 394, in order to allow the Congress sufficient time to analyze the report and recommendations of the Secretaries of Interior and Agriculture under subsec. (a) of this section and to take appropriate action, provided that the 1978 grazing year fee was not to be raised by the Secretary of the Interior for the grazing of livestock on public lands nor by the Secretary of Agriculture for such grazing on lands under the jurisdiction of the Forest Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1904 of this title.

§ 1752. Grazing leases and permits

(a) Terms and conditions

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but

which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further,* That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

[*See main edition for text of* (c)]

(d) Allotment management plan requirements

All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978 [43 U.S.C. 1901 et seq.]".

(e) Omission of allotment management plan requirements and incorporation of appropriate terms and conditions; reexamination of range conditions

In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

[*See main edition for text of* (f) *to* (h)]

(As amended Pub. L. 95-514, §§ 7, 8, Oct. 25, 1978, 92 Stat. 1807.)

REFERENCES IN TEXT

The Public Rangelands Improvement Act of 1978, referred to in subsec. (d), is Pub. L. 95-514, Oct. 25, 1978, 92 Stat. 1803, which is classified principally to chapter 37 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514, § 7(b), substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

Subsec. (b)(3). Pub. L. 95-514, § 7(a), inserted provision that absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless information therein would be necessary to determine whether a shorter term should be established for any of the specified reasons.

Subsec. (d). Pub. L. 95-514, § 8(a), deleted ", with the exceptions authorized in subsection (e) of this section, on and after October 1, 1988," following "pursuant to this section" and inserted provisions prohibiting any requirements for completion of court ordered environmental impact statements prior to development and incorporation of allotment plans from being superseded by subsec. (d), providing for careful and considered consultation, cooperation, and coordination with certain persons, including landlowners involved, district grazing advisory boards and States having lands within the covered area and for tailoring allotment management plans to the specific range condition of the covered area and periodic review thereof, authorizing the Secretary to terminate or develop the plans after review and careful and considered consultation, cooperation, and coordination with the parties involved, and defining the terms "court ordered environmental impact statement" and "range condition".

Subsec. (e). Pub. L. 95-514, § 8(b), substituted introductory word "In" for "Prior to October 1, 1988, or thereafter, in".

LIVESTOCK REDUCTIONS ON PUBLIC RANGELANDS; CRITERIA FOR PHASED GRAZING ALLOTMENT REDUCTIONS; TIME FOR APPEAL FROM FINAL GRAZING ALLOTMENT DECISION; PERCENTAGE REDUCTIONS EFFECTIVE WHEN DESIGNATED; EXCESS REDUCTIONS SUSPENDED PENDING FINAL APPELLATE ACTION; TIME FOR APPELLATE DECISION

Pub. L. 96-126, title I, § 100, Nov. 27, 1979, 93 Stat. 956, provided in part:

"That the Secretary of the Interior shall develop criteria for extending, on a case-by-case basis, the period allowed for phased livestock reductions on public rangelands administered through the Bureau of Land Management up to five years. Such criteria shall take into account available agricultural assistance programs, the magnitude of projected livestock reductions, alternative pasturage available and ability of such public rangelands to sustain such phasing in of livestock reductions without damage to rangeland productivity: *Provided further,* That an appeal of any reductions in grazing allotments on public rangelands must be taken within 30 days after receipt of a final

grazing allotment decision or 90 days after the effective date of this Act [Nov. 27, 1979] in the case of reductions ordered during 1979, whichever occurs later. Reductions of up to 10 per centum in grazing allotments shall become effective when so designated by the Secretary of the Interior. Upon appeal any proposed reduction in excess of 10 per centum shall be suspended pending final action on the appeal, which shall be completed within 2 years after the appeal is filed."

§ 1753. Grazing advisory boards

(a) Establishment; maintenance

For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

[See main edition for text of (b) to (f)]

(As amended Pub. L. 95-514, § 10, Oct. 25, 1978, 92 Stat. 1808.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514 substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1752, 1904 of this title.

SUBCHAPTER V—RIGHTS-OF-WAY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1702 of this title; title 30 section 201.

§ 1761. Grant, issue, or renewal of rights-of-way; authorized purposes; procedures applicable

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Enforcement functions of the Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 1763 to 1771

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 36—OUTER CONTINENTAL SHELF RESOURCE MANAGEMENT [NEW]

Sec.
1801. Congressional findings.
1802. Congressional declaration of purposes.

SUBCHAPTER I—OFFSHORE OIL SPILL POLLUTION FUND

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§ 1801. Congressional findings

The Congress finds and declares that—

(1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;

(2) domestic production of oil and gas has declined in recent years;

(3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;

(4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;

(5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;

(6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;

(7) the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;

(8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas reserves of the Outer Continental Shelf;

(9) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;

(10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on various States and local governments;

(11) policies, plans, and programs developed by States and local governments in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States, working in close cooperation with affected local governments, are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;

(12) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(13) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation;

(14) the oil and gas resources of the Outer Continental Shelf are limited, nonrenewable resources which must be developed in a manner which takes into consideration the Nation's long-range energy needs and also assures adequate protection of the renewable resources of the Outer Continental Shelf which are a continuing and increasingly important source of food and protein to the Nation and the world; and

(15) funds must be made available to pay for damage to commercial fishing vessels and gear resulting from activities involving oil and gas exploration, development, and production on the Outer Continental Shelf.

(Pub. L. 95-372, title I, § 101, Sept. 18, 1978, 92 Stat. 630.)

SHORT TITLE

Section 1 of Pub. L. 95-372 provided: "That this Act [enacting this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amending sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 1348 and 1811 of this title] may be cited as the 'Outer Continental Shelf Lands Act Amendments of 1978'."

§ 1802. Congressional declaration of purposes

The purposes of this chapter are to—

(1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf which are intended to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

(2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition;

(3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;

(4) provide States, and through States, local governments, which are impacted by Outer Continental Shelf oil and gas exploration, development, and production with comprehensive assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) establish an oilspill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(9) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time; and

(10) establish a fishermen's contingency fund to pay for damages to commercial fishing vessels and gear due to Outer Continental Shelf activities.

(Pub. L. 95-372, title I, § 102, Sept. 18, 1978, 92 Stat. 631.)

REFERENCES IN TEXT

This chapter, referred to in opening provision, in the original read "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SUBCHAPTER I—OFFSHORE OIL SPILL POLLUTION FUND

§ 1811. Definitions

For the purposes of this subchapter, the term—

(1) "Secretary" means the Secretary of Transportation;

(2) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 1812 of this title;

(3) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(4) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

(5) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 1301(a)(2) of this title), and which is transporting oil directly from an offshore facility;

(6) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

(B) is not engaged in commercial service;

(7) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(8) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term "outer Continental Shelf" is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 1502(10) of title 33);

(9) "oil pollution" means—

(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 1301(a)(2) of this title), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this subchapter;

(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this subchapter;

(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this subchapter;

(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs:

(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

(17) "claim" means a demand in writing for a sum certain;

(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

(20) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

(21) "property" means littoral, riparian, or marine property;

(22) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (*l*) of section 1321 of title 33, and section 1474 of title 33; and

(B) cleanup costs, other than the costs described in subparagraph (A);

(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(Pub. L. 95-372, title III, § 301, Sept. 18, 1978, 92 Stat. 670.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in par. (9), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

EFFECTIVE DATE

Section 315 of Pub. L. 95-372 provided that:

"(a) This section, subsection (e) of section 304 [section 1814(e) of this title], subsection (d) of section 305 [section 1815(d) of this title], and all provisions of this title [this subchapter] authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title [Sept. 18, 1978].

"(b) All other provisions of this title [this subchapter], and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title [Sept. 18, 1978]."

EX. ORD. NO. 12123. DELEGATION OF CERTAIN FUNCTIONS OF PRESIDENT

Ex. Ord. No. 12123, Feb. 26, 1979, 44 F.R. 11199, provided:

By the authority vested in me as President of the United States of America by Section 303(b)(3), 305, and 312(a) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 674, 677, and 684, 43 U.S.C. 1813(b)(3), 1815, and 1822 [1822(a)]), relating to the Offshore Oil Spill Pollution Fund, and by Section 301 of Title 3 of the United States Code, and in order to assign certain management responsibilities related to protecting the environment from offshore oil spill damage, it is hereby ordered as follows:

1-1. ASSERTION OF OIL POLLUTION CLAIMS

1-101. The authority vested in the President by Section 303(b)(3) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978, hereinafter referred to as the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)), is delegated to the Secretary of Commerce with respect to those natural resources which are subject to his management or control.

1-102. The authority vested in the President by Section 303(b)(3) of the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)) is delegated to the Secretary of the Interior with respect to those natural resources which are subject to his management or control.

1-2. DETERMINATION OF FINANCIAL RESPONSIBILITY AND THE ASSESSMENT AND COMPROMISE OF PENALTIES

1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels, is delegated to the Federal Maritime Commission.

1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities, is delegated to the Secretary of Transportation.

1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compro-

mise of penalties concerning vessels, is delegated to the Federal Maritime Commission.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1812, 1814 of this title.

§ 1812. Offshore Oil Pollution Compensation Fund

(a) Establishment in Treasury; limitation on amount; administration by Secretary of Transportation and Secretary of Treasury

There is hereby established in the Treasury of the United States on[1] Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this subchapter. The Fund may sue and be sued in its own name.

(b) Sources of deposits

The Fund shall be composed of—

(1) all fees collected pursuant to subsection (d) of this section; and

(2) all other moneys recovered or collected on behalf of the Fund under section 1818 of this title or any other provision of this subchapter.

(c) Use of moneys; promulgation of regulations

The Fund shall be immediately available for—

(1) removal costs described in section 1811(22) of this title;

(2) the processing and settlement of claims under section 1817 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this subchapter, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 1818 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

(d) Fee; levy and collection; rate; civil penalty; criminal violation; promulgation of regulations

(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such mocification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

(e) Determination of level of funding; investment of excess moneys

(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

(f) Notes and other obligations to meet insufficiencies in Fund

If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption

[1] So in original. Probably should be "an".

of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(Pub. L. 95-372, title III, § 302, Sept. 18, 1978, 92 Stat. 672.)

REFERENCES IN TEXT

The Second Liberty Bond Act, referred to in subsec. (f), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1811, 1823 of this title.

§ 1813. Claims for economic loss from oil pollution

(a) Permissible claims

Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs; and

(2) damages, including—

(A) injury to, or destruction of, real or personal property;

(B) loss of use of real or personal property;

(C) injury to, or destruction of, natural resources;

(D) loss of use of natural resources;

(E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and

(F) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) Persons entitled to assert claims

A claim authorized by subsection (a) of this section may be asserted—

(1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

(A) that he is entitled to a defense to liability under section 1814(c)(1) or 1814(c)(2) of this title; or

(B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 1814(b) of this title, except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under paragraphs (2)(A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under paragraph (2)(C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

(6) under paragraphs (2)(A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

(c) Class action where Attorney General fails to take action

If the Attorney General fails to take action under paragraph (7) of subsection (b) of this section within sixty days of the date on which the Secretary designates a source under section 1816 of this title, any member of a group de-

scribed in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

(Pub. L. 95–372, title III, § 303, Sept. 18, 1978, 92 Stat. 674.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (b)(6)(C), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1814, 1815, 1817, 1818 of this title.

§ 1814. Scope of liability

(a) Liability of owners and operators of nonpublic vessels or offshore facilities

Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 1811(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 1813 of this title.

(b) Limitation of liability

Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

(1) in the case of a vessel, limited to $250,000 or $300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to $35,000,000 for all damages.

(c) Exceptions and defenses

There shall be no liability under subsection (a) of this section—

(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable[1] character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

(d) Costs of removal

Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

(e) Report to Congress

The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

(f) Liability of Fund

(1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 1813 of this title, to the extent that such losses are not otherwise compensated.

(2) Except for the removal costs specified in section 1811(22) of this title, there shall be no liability under paragraph (1) of this subsection—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g) Interest

(1) In addition to the losses for which claims may be asserted under section 1813 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 1816 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

[1] So in original. Probably should be "irresistible".

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) Actions by owners or operators

Nothing in this subchapter shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(i) Inconsistent provisions

To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 183(a) of title 46.

(Pub. L. 95-372, title III, § 304, Sept. 18, 1978, 92 Stat. 675.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1813, 1815, 1817, 1818 of this title.

§ 1815. Financial responsibility

(a) Establishment of evidence by owners and operators of vessels; acceptable methods; authority of Secretary to deny entry to port and detain at port; access of Secretary to offshore facilities and vessels

(1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 1814(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary, in accordance with regulations promulgated by him, shall—

(A) deny entry to any port or place in the United States or to the navigable waters to; and

(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and such facilities and vessels shall, upon request, show certification of financial responsibility.

(b) Establishment of evidence by owners and operators of offshore facilities

The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 1814(b) of this title, or $35,000,000, whichever is less.

(c) Claims against guarantor

Any claim authorized by section 1813(a) of this title may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this subchapter. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

(Pub. L. 95-372, title III, § 305, Sept. 18, 1978, 92 Stat. 677.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

CODIFICATION

Former subsec. (d) of this section, which authorized the President to conduct a study relating to the availability of private oil pollution insurance and the competitive nature of the market for such insurance and required the President to submit the results of such study within one year after Sept. 18, 1978, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1822 of this title.

§ 1816. Notification, designation, and advertisement

(a) Notification of incident to Secretary; use as evidence

The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

(b) Designation of source of oil pollution; notification of owners, operators, and guarantors; advertisement of designation and procedures respecting claims against owners, operators, and guarantors

(1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

(c) Advertisement or other notification respecting claims against Fund

In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

(2) the source of the discharge was a public vessel; or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

(d) Commencement of advertisement

Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

(Pub. L. 95-372, title III, § 306, Sept. 18, 1978, 92 Stat. 678.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1813, 1814, 1817, 1818, 1822 of this title.

§ 1817. Claims settlement

(a) Claims presented to owner, operator, or guarantor

Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor.

(b) Claims presented to Fund

All claims shall be presented to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 1816(c) of this title; or

(2) where the owner or operator may recover under the provisions of section 1813(b)(1) of this title.

(c) Irrevocable election to commence court action or present claim to Fund

In the case of a claim presented in accordance with subsection (a) of this section, and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 1816(b)(2) of this title, whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) Uncompensated damages

In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 1814(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) Transmittal of claims and supporting documents to Fund

In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

(f) Submittal of dispute to Secretary; election to commence court action

In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

(1) denies all liability for the claim, for any reason; or

(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 1816(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

(g) Establishment of procedures and standards for appraisal and settlement of claims against Fund; use of private insurance and claims adjustment organizations and State agencies to process claims; use of Federal personnel to process claims

(1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 5 of title 41 upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

(h) Appointment of panels

Notwithstanding subsection (b) of section 556 of title 5, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

(i) Referral of disputes; qualifications of administrative law judges; adjudication and decision pursuant to title 5; conduct of hearing; review by Secretary; review of final orders of Secretary

(1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5 or (B) a panel appointed under subsection (h) of this section.

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5 and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5 in the district courts of the United States.

(j) Service of complaint and other pleadings upon Fund; intervention by Fund; dismissal of Fund from action; conclusiveness of judgment; failure to give notice to Fund

(1) In any action brought pursuant to this subchapter against an owner, operator, or guarantor, both the plaintiff and defendant shall

serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this subchapter, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 1814(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(k) Joinder

In any action brought against the Fund under this subchapter, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this subchapter.

(l) Time for presenting claims; limitation of actions

No claim may be presented, nor may an action be commenced for economic losses recoverable under this subchapter, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 1813(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

(Pub. L. 95–372, title III, § 307, Sept. 18, 1978, 92 Stat. 679.)

REFERENCES IN TEXT

Executive Order 11222, as amended, referred to in subsec. (h), is set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1812, 1818 of this title.

§ 1818. Subrogation

(a) Rights, claims, and causes of action of compensated claimants

Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 1813 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this subchapter.

(b) Action commenced by Attorney General

Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this subchapter. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

(c) Elements of recovery

In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b) of this section, the Fund shall recover—

(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 1817(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 1817(c)(1) of this title—

(A) subject only to the limitation of liability to which the defendant is entitled under section 1814(b) of this title, the amount the Fund has paid to the claimant, without reduction;

(B) interest on such amount, at the rate calculated in accordance with section 1814(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the Fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the Fund pursuant to section 1817(c)(2) of this title—

(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 1814(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the Fund has paid to the claimant is less than or equal to

the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount which the Fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 1814(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 1816 of this title, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

(d) Payment of interest to claimant

The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c)(1) and (2)(A) of this section, for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

(e) Recovery of interest and costs by Fund

The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this subchapter.

(Pub. L. 95–372, title III, § 308, Sept. 18, 1978, 92 Stat. 682.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1812 of this title.

§ 1819. Jurisdiction and venue

(a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this subchapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(Pub. L. 95–372, title III, § 309, Sept. 18, 1978, 92 Stat. 683.)

§ 1820. Relationship to other State or Federal laws

(a) Compensation for damages or removal costs

Any person who receives compensation for damages or removal costs pursuant to this subchapter shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this subchapter.

(b) Establishment of evidence of financial responsibility

No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

(c) Concurrent liability

Except as otherwise provided in this subchapter, this subchapter shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

(Pub. L. 95–372, title III, § 310, Sept. 18, 1978, 92 Stat. 684.)

§ 1821. Oil discharge prohibition

The discharge of oil from any offshore facility or vessel, in quantities which the President under section 1321(b) of title 33 determines to be harmful, is prohibited.

(Pub. L. 95–372, title III, § 311, Sept. 18, 1978, 92 Stat. 684.)

§ 1822. Penalties

(a)(1) Any person who fails to comply with the requirements of section 1815 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed $10,000.

(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 1815(a)(1) of this title, and by the Secretary, in connection with section 1815(a)(3) and section 1815(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good

faith of the party shall be taken into consideration.

(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 1816(a) of this title shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

(Pub. L. 95-372, title III, § 312, Sept. 18, 1978, 92 Stat. 684.)

§ 1823. Authorization of appropriations

(a) There is authorized to be appropriated for the administration of this subchapter $10,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this subchapter, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 1812(f) of this title.

(c) Notwithstanding any other provision of this subchapter, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 1812(f) of this title, to charge and collect fees pursuant to section 1812(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after September 18, 1978.

(Pub. L. 95-372, title III, § 313, Sept. 18, 1978, 92 Stat. 685.)

§ 1824. Annual report

Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this subchapter.

(Pub. L. 95-372, title III, § 314, Sept. 18, 1978, 92 Stat. 685.)

SUBCHAPTER II—FISHERMEN'S CONTINGENCY FUND

§ 1841. Definitions

As used in this subchapter, the term—

(1) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State, or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 per centum of the interest of therein owned by citizens of the United States. Seventy-five per centum of the interest in the corporation shall not be deemed to be owned by citizens of the United States—

(A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States;

(C) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;

(2) "commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel;

(3) "commercial fishing vessel" means any vessel, boat, ship, or other craft which is (A) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (B) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing;

(4) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species;

(5) "fishing gear" means (A) any commercial fishing vessel, and (B) any equipment of such vessel, whether or not attached to such a vessel;

(6) "Fund" means the Fishermen's Contingency Fund established under section 1842 of this title; and

(7) "Secretary" means the Secretary of Commerce or the designee of such Secretary.

(Pub. L. 95-372, title IV, § 401, Sept. 18, 1978, 92 Stat. 685.)

§ 1842. Fishermen's Contingency Fund

(a) Establishment in Treasury; availability; limitation on amount; source of deposits

There is hereby established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of making payments pursuant to this section. The total

amount in the Fund shall at no time exceed $1,000,000. Amounts paid pursuant to the provisions of subsections (c) and (d) of this section shall be deposited in the Fund. The Fund may sue or be sued in its own name.

(b) Establishment and maintenance of area account within Fund

The Secretary is authorized to establish and maintain an area account within the Fund for any area of the Outer Continental Shelf for purposes of providing reasonable compensation for damages to, or loss of, fishing gear and any resulting economic loss to commercial fishermen due to activities related to oil and gas exploration, development, and production in such area.

(c) Collection of fee

Upon establishment of an area account for any area of the Outer Continental Shelf pursuant to subsection (b) of this section, any holder of a lease issued or maintained under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] for any tract in such area and any holder of an exploration permit, or of an easement or right-of-way for the construction of a pipeline in such area, shall pay an amount specified by the Secretary for the purpose of the establishment and maintenance of an area account for such area. The Secretary of the Interior shall collect such amount and deposit it to the credit of such area account within the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of $5,000 per lease, permit, easement, or right-of-way.

(d) Level of area account funds

Subject to subsection (a) of this section, each area account established pursuant to this section shall be maintained at a level not to exceed $100,000 and, if depleted, shall be replenished by assessments of holders of leases, permits, easements, and rights-of-way in such area.

(e) Use of area account funds

Amounts in each such area account shall be available for disbursement and shall be disbursed, subject to such amounts as are provided in appropriations Acts, for only the following purposes:

(1) Administrative and personnel expenses of such area account and administrative and personnel expenses of the Fund which relate to such area account, except that amounts disbursed for such expenses in any fiscal year shall not exceed 15 per centum of the amounts deposited in such revolving account in such fiscal year.

(2) The payment of any claim in accordance with procedures established under this section for damages suffered as a result of activities in the area for which such area account was established.

(3) Reasonable attorney's fees awarded pursuant to section 1845(e) of this title.

(Pub. L. 95-372, title IV, § 402, Sept. 18, 1978, 92 Stat. 686.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (c), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1841 of this title.

§ 1843. Duties and powers of Secretary

(a) Prescription and amendment of regulations respecting settlement of claims; identification classification of potential hazards to commercial fishing

In carrying out the provisions of this subchapter, the Secretary shall—

(1) prescribe, and from time to time amend, regulations for the filing, processing, and fair and expeditious settlement of claims pursuant to this subchapter, including a time limitation on the filing of such claims; and

(2) identify and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface.

(b) Establishment of regulations respecting color coding, stamping, or labeling of equipment, tools, etc., used on Outer Continental Shelf

The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.

(c) Disbursement of payments to compensate commercial fishermen; restrictions

(1) Payments shall be disbursed by the Secretary from the appropriate area account to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in such area, whether or not such damage occurred in such area.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from any area account established under this subchapter—

(A) when the damage set forth in a claim was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party;

(B) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;

(C) if the damage set forth in the claim was sustained prior to September 18, 1978;

(D) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed;

(E) in the case of a claim for loss of profits (i) for any period in excess of 6 months, and (ii) unless such claim is supported by records

with respect to the claimant's profits during the previous 12-month period; and

(F) for any portion of the damages claimed with respect to which the claimant has or will receive compensation from insurance.

(Pub. L. 95–372, title IV, § 403, Sept. 18, 1978, 92 Stat. 687.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1847 of this title.

§ 1844. Burden of proof

With respect to any claim for damages filed pursuant to this subchapter, there shall be a presumption that such claim is valid if the claimant establishes that—

(1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;

(2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within five days after the date on which such damages were discovered;

(3) there was no record on nautical charts or the Notice to Mariners on the date such damages were sustained that such material, equipment, tool, container, or other item existed in such area; and

(4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.

(Pub. L. 95–372, title IV, § 404, Sept. 18, 1978, 92 Stat. 688.)

§ 1845. Claims procedure

(a) Filing requirement; time to file

Any commercial fisherman suffering damages compensable under this subchapter may file a claim for compensation with the Secretary, except that no such claim may be filed more than 60 days after the date of discovery of the damages with respect to which such claim is made.

(b) Transmittal of copy of claim to Secretary of the Interior; reference to administrative law judge

Upon receipt of any claim under this section, the Secretary shall—

(1) transmit a copy of the claim to the Secretary of the Interior; and

(2) refer such matter to a administrative law judge appointed under section 3105 of title 5.

(c) Notification to persons engaged in activities associated with Outer Continental Shelf energy activities; response of persons notified; submittal of evidence

The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any hearing conducted with respect to such claim.

(d) Time to render decision

The administrative law judge shall, within 120 days after such matter is referred to him by the Secretary, adjudicate the case and render a decision in accordance with section 554 of title 5.

(e) Attorneys' fees

If the decision of the administrative law judge is in favor of the commercial fisherman filing the claim, such administrative law judge shall include, as part of the amount certified to the Secretary under subsection (h)(1) of this section, reasonable attorneys' fees incurred by such commercial fisherman in pursuing such claim.

(f) Powers of administrative law judge

(1) For purposes of any hearing conducted pursuant to this section, the administrative law judge shall have the power to administer oaths and subpena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.

(2) In any hearing conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the administrative law judge shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section 1847 of this title.

(g) Place of hearing

A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district.

(h) Certification and disbursement of award; subrogation of rights; payment of costs of proceedings

(1) Upon a decision by the administrative law judge and in the absence of a request for judicial review, any amount to be paid, subject to the limitations of this section, shall be certified to the Secretary, who shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

(2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made.

(3) Any person who denies responsibility for damages with respect to which a claim is made and who is subquently[1] found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

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[1] So in original. Probably should be "subsequently".

(i) Judicial review

Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a administrative law judge under this section may, no later than 60 days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit.

(Pub. L. 95-372, title IV, § 405, Sept. 18, 1978, 92 Stat. 688.)

CODIFICATION

In subsecs. (b)(2), (d) to (f), (h)(1), and (i) of this section "administrative law judge" was substituted for "hearing examiner" on authority of Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184, set out as a note under section 3105 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1842 of this title.

§ 1846. Annual report

(a) The Secretary shall submit an annual report to the Congress which shall set forth—

(1) a description of the types of damages set forth in claims filed with the Secretary during the previous year for compensation from the Fund;

(2) the amount of compensation awarded to claimants during the previous year; and

(3) the number of cases during the previous year in which damages were determined to be the responsibility of a lessee or permittee conducting operations on the Outer Continental Shelf, or the contractor or subcontractor of such a lessee or permittee.

(b) In addition to the material described in subsection (a) of this section, the Secretary shall, after consultation with the Secretary of the Interior, include in the first annual report an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear by (1) imposing fines or penalties on lessees or permittees, or contractors or subcontractors of lessees or permittees, who are responsible for such obstructions, or (2) requiring the bonding of such lessees or permittees or such contractors or subcontractors.

(Pub. L. 95-372, title IV, § 406, Sept. 18, 1978, 92 Stat. 689.)

§ 1847. Survey of obstructions on Outer Continental Shelf

(a) Cooperation with Secretary of the Interior; purposes of survey

The Secretary, in cooperation with the Secretary of the Interior, shall conduct a two-year survey of obstructions on the Outer Continental Shelf. Such survey shall be conducted for purposes of identifying (1) natural obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear, and (2) in addition, in the case of areas in which oil and gas exploration, development, or production is taking place, manmade obstructions relating to such activities which pose potential hazards to commercial fishing or fishing gear.

(b) Development of charts for commercial fishermen

The Secretary shall, on the basis of the survey conducted under this section, and regulations promulgated under section 1843(a) of this title, develop charts for commercial fishermen identifying obstructions on the Outer Continental Shelf.

(c) Area of concentration

During the first six months of the survey conducted under this section, the Secretary shall concentrate on areas of the Outer Continental Shelf where oil and gas production has commenced or is expected to commence prior to the expiration of the two-year period of such survey.

(Pub. L. 95-372, title IV, § 407, Sept. 18, 1978, 92 Stat. 690.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1845 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 1861. Report to Comptroller General on shut-in and flaring oil and gas wells; submission of findings and recommendations to Congress

(a) In a report submitted within six months after September 18, 1978, and his annual report thereafter, the Secretary of the Interior shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.]. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

(Pub. L. 95-372, title VI, § 601, Sept. 18, 1978, 92 Stat. 693.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

§ 1862. Natural gas distribution

(a) Expanded participation by local distribution companies in acquisition of leases and development of natural gas resources

The purpose of this section is to encourage expanded participation by local distribution

companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.

(b) Application and issuance of certificates of public convenience and necessity for transportation of natural gas

The Federal Energy Regulatory Commission shall, after opportunity for presentation of written and oral views, promulgate and publish in the Federal Register a statement of Commission policy which carries out the purpose of this section and sets forth the standards under which the Commission will consider applications for, and, as appropriate, issue certificates of public convenience and necessity, pursuant to section 717f of title 15, for the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company. Such statement of policy shall specify the criteria, limitations, or requirements the Commission will apply in determing—[1]

(1) whether the application of any local distribution company qualifies for consideration under the statement of policy; and

(2) whether the public convenience and necessity will be served by the issuance of the requested certificate of transportation.

Such statement of policy shall also set forth the terms or limitations on which the Commission may condition, pursuant to section 717f of title 15, the issuance of a certificate of transportation under such statement of policy. To the maximum extent practicable, such statement shall be promulgated and published within one year after September 18, 1978.

(c) Definitions

For purposes of this section, the term—

(1) "local distribution company" means any person—

(A) engaged in the distribution of natural gas at retail, including any subsidiary or affiliate thereof engaged in the exploration and production of natural gas; and

(B) regulated, or operated as a public utility, by a State or local government or agency thereof;

(2) "interstate commerce" shall have the same meaning as such term has under section 717a(7) of title 15; and

(3) "Commission" means the Federal Energy Regulatory Commission.

(Pub. L. 95-372, title VI, § 603, Sept. 18, 1978, 92 Stat. 694.)

§ 1863. Unlawful employment practices; regulations

Each agency or department given responsibility for the promulgation or enforcement of regulations under this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this chapter or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, whether through agency and department provisions or rules, shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq., 2000e et seq.].

(Pub. L. 95-372, title VI, § 604, Sept. 18, 1978, 92 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in text, is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 252, as amended. Title VI and VII of the Civil Rights Act of 1964 are classified generally to subchapters V (§ 2000d et seq.) and VI (§ 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

§ 1864. Disclosure of financial interests by officers and employees of Department of the Interior

(a) Annual written statement

Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is otherwise subject to the provisions of this chapter or the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.],

shall, beginning on February 1, 1979, annually file with the Secretary of the Interior a written statement concerning all such interests held by

[1] So in original. Probably should be "determining—".

such officer or employee during the preceeding[1] calendar year. Such statement shall be available to the public.

(b) Definition of "known financial interest"; enforcement; report to Congress

The Secretary of the Interior shall—

(1) within ninety days after September 18, 1978—

(A) define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Officers and employees in nonregulatory or nonpolicymaking positions

In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalties

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 95–372, title VI, § 605, Sept. 18, 1978, 92 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1) and (2), in the original read "this Act", meaning Pub. L. 95–372, Sept. 18, 1978, 92 Stat. 629, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

This Act, referred to in subsec. (a)(1), is Pub. L. 95–372, Sept. 18, 1978, 92 Stat. 629. See note above.

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(1) and (2), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

§ 1865. Investigation of reserves of oil and gas in Outer Continental Shelf

(a) Declaration of Congressional findings

The Congress hereby finds that—

(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

(2) there is currently an urgent need for such information;

(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

(b) Declaration of Congressional purpose

The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production available to meet current and future energy supply emergencies, to gain accurate knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

(c) Continuing investigation to determine reserves

The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

(d) Scope of investigation

The investigation conducted pursuant to this section shall include, among other items—

(1)(A) a determination of the maximum attainable rate of production (MAR) of crude oil and natural gas from significant fields on the Outer Continental Shelf; and

(B) an analysis of whether the actual production has been less than the MAR and, if so, the reasons for the differences;

(2) an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf;

(3) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

(4) an independent evaluation of trade association procedures for estimating Outer Continental Shelf reserves, ultimate recovery, and productive capacity for years in which trade associations made such estimates. In order to provide maximum opportunity for evaluation and continuity, the Secretary shall

[1] So in original. Probably should be "preceding".

obtain all the available data and other records, including a description of the methodology and estimating procedures, which the trade associations used in compiling their data with respect to the reserves.

(e) Initial and subsequent reports to Congress

The Secretary shall, not later than one year after September 18, 1978, submit an initial report to the Congress. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the information required in subsections (d)(1)(A), (d)(2), and (d)(3) of this section on the day following the first complete calendar year after September 18, 1978, and every two years thereafter. The Secretary shall make separate reports on the data acquired pursuant to subsection (d)(4) of this section as follows:

(1) Within six months after September 18, 1978, a report on the acquisition and details of trade association data and information.

(2) Within twelve months after submission of the report required by subsection (e)(1) of this section, an evaluation of the trade association materials.

(3) Within twelve months after submission of the report required by paragraph (2) of this subsection, a report on the relationship between trade association data and the new data collected under this section.

(f) Categories of information acquired; consultation with Federal Trade Commission; availability of information

The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

(g) Definitions

For purposes of this section, the term—

(1) "maximum attainable rate of production" or "MAR" means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas; and

(2) "Outer Continental Shelf" has the meaning given such term in section 1331(a) of this title.

(Pub. L. 95-372, title VI, § 606, Sept. 18, 1978, 92 Stat. 696.)

§ 1866. Relationship to existing law

(a) Except as otherwise expressly provided in this chapter, nothing in this chapter shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.], the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], the Mining and Mineral Policy Act of 1970 [30 U.S.C. 21a], or any other Act.

(b) Nothing in this chapter or any amendment made by this Act to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or any other Act shall be construed to affect or modify the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) which provide for the transferring and vesting of functions to and in the Secretary of Energy or any component of the Department of Energy.

(Pub. L. 95-372, title VI, § 608, Sept. 18, 1978, 92 Stat. 698.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629, known as the Outer Continental Shelf Lands Act Amendments of 1978, which enacted this chapter, sections 1344 to 1356 of this title, and section 237 of Title 30, Mineral Lands and Mining, amended sections 1331 to 1334, 1337, 1340, and 1343 of this title, sections 1456, 1456a, and 1464 of Title 16, Conservation, and section 6213 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 1348 and 1811 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (a), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under 4321 of Title 42 and Tables.

The Mining and Mineral Policy Act of 1970, referred to in subsec. (a), is Pub. L. 91-631, Dec. 31, 1970, 84 Stat. 1876, which is classified to section 21a of Title 30, Mineral Lands and Mining.

This Act, referred to in subsec. (b), is Pub. L. 95-372, Sept. 18, 1978, 92 Stat. 629. See note above.

The Outer Continental Shelf Lands Act, referred to in subsec. (b) is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (b), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

CHAPTER 37—PUBLIC RANGELANDS IMPROVEMENT [NEW]

Sec.
1901. Congressional findings and declaration of policy.
1902. Definitions.
1903. Rangelands inventory and management; public availability.
1904. Range improvement funding.
(a) Authorization of additional appropriations.
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(c) Fund limitations for prescribed uses; distribution, consultation and coordination; public hearings and meetings; interested parties; priority of cooperative agreements with range users.

(d) Environmental assessment record and environmental impact statement requirements.

1905. Grazing fees; economic value of use of land; fair market value components; annual percentage change limitation.

1906. Authority for cooperative agreements and payments effective as provided in appropriations.

1907. National Grassland exemptions.

1908. Experimental stewardship program.

(a) Scope of program.

(b) Report to Congress.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1752 of this title.

§ 1901. Congressional findings and declaration of policy

(a) The Congress finds and declares that—

(1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;

(2) such rangelands will remain in an unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;

(3) unsatisfactory conditions on public rangelands present a high risk of soil loss, desertification,[1] and a resultant underproductivity for large acreages of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands for recreational and esthetic purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;

(4) the above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;

(5) to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production;

(6) the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding, harrassment, and death, but that certain amendments are necessary thereto to avoid excessive costs in the administration of the Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil conservation, domestic livestock grazing, and other rangeland values;

(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:

(1) inventory and identify current public rangelands conditions and trends as a part of the inventory process required by section 1711(a) of this title;

(2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 1712 of this title;

(3) charge a fee for public grazing use which is equitable and reflects the concerns addressed in paragraph (a)(5) above;

(4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values;

(c) The policies of this chapter shall become effective only as specific statutory authority for their implementation is enacted by this chapter or by subsequent legislation, and shall be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of law.

(Pub. L. 95-514, § 2, Oct. 25, 1978, 92 Stat. 1803.)

REFERENCES IN TEXT

The Act of December 15, 1971, referred to in subsec. (a)(6), is Pub. L. 92-195, Dec. 15, 1971, 85 Stat. 649, as amended, popularly known as the Wild Free-Roaming Horses and Burros Act, which is classified generally to chapter 30 (§ 1331 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 16 and Tables.

This chapter, referred to in subsec. (c), in the original read "this Act", meaning Pub. L. 95-514, Oct. 25, 1978, 92 Stat. 1803, which enacted this chapter and amended sections 1739 and 1751 to 1753 of this title and sections 1332 and 1333 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 95-514 provided: "That this Act [which enacted this chapter and amended sections 1739 and 1751 to 1753 of this title and sections 1332 and 1333 of Title 16, Conservation] may be cited as the 'Public Rangelands Improvement Act of 1978'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1903 of this title.

[1] So in original.

§ 1902. Definitions

As used in this chapter—

(a) The terms "rangelands" or "public rangelands" means lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.

(b) The term "allotment management plan" is the same as defined in section 1702(k) of this title, except that as used in this chapter such term applies to the sixteen contiguous Western States.

(c) The term "grazing permit and lease" means any document authorizing use of public lands or lands in national forests in the sixteen contiguous Western States for the purpose of grazing domestic livestock.

(d) The term "range condition" means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objectives and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired community for that site.

(e) The term "native vegetation" means those plant species, communities, or vegetative associations which are endemic to a given area and which would normally be identified with a healthy and productive range condition occurring as a result of the natural vegetative process of the area.

(f) The term "range improvement" means any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

(g) The term "court ordered environmental impact statement" means any environmental statements which are required to be prepared by the Secretary of the Interior pursuant to the final judgment or subsequent modification thereof as set forth on June 18, 1975, in the matter of Natural Resources Defense Council against Andrus.

(h) The term "Secretary" unless specifically designated otherwise, means the Secretary of the Interior.

(i) The term "sixteen contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

(Pub. L. 95-514, § 3, Oct. 25, 1978, 92 Stat. 1804.)

REFERENCES IN TEXT

This chapter, referred to in opening provision and in subsec. (b), in the original read "this Act", meaning Pub. L. 95-514, Oct. 25, 1978, 92 Stat. 1803, which enacted this chapter and amended sections 1739 and 1751 to 1753 of this title and sections 1332 and 1333 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1333.

§ 1903. Rangelands inventory and management; public availability

(a) Following enactment of this chapter, the Secretary of the Interior and the Secretary of Agriculture shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands, and shall categorize or identify such lands on the basis of the range conditions and trends thereof as they deem appropriate. Such inventories shall be conducted and maintained by the Secretary as a part of the inventory process required by section 201(a) of the Federal Land Policy and Management Act (43 U.S.C. 1711), and by the Secretary of Agriculture in accordance with section 1603 of title 16; shall be kept current on a regular basis so as to reflect changes in range conditions; and shall be available to the public.

(b) The Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act (43 U.S.C. 315-315(o)), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1782), and other applicable law consistent with the public rangelands improvement program pursuant to this chapter. Except where the land use planning process required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) determines otherwise or the Secretary determines, and sets forth his reasons for this determination, that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in sections 1901(a) and (b)(2) of this title.

(Pub. L. 95-514, § 4, Oct. 25, 1978, 92 Stat. 1805.)

REFERENCES IN TEXT

The Federal Land Policy and Management Act of 1976, referred to in subsec. (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The Taylor Grazing Act, referred to in subsec. (b), is act June 28, 1934, ch. 865, 48 Stat. 1269, as amended, which is classified principally to subchapter I (§ 315 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 315 of this title and Tables.

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§ 1904. Range improvement funding

(a) Authorization of additional appropriations

In order to accomplish the purposes of this chapter, there are hereby authorized to be appropriated the sum of an additional $15,000,000 annually in fiscal years 1980 through 1982; for fiscal years 1983 through 1986 an amount no less than the amount authorized for 1982; and for fiscal years 1987 through 1999 an amount not less than $5,000,000 annually more than the amount authorized for fiscal year 1986. Such funds shall be in addition to any range, wildlife, and soil and water management moneys which have been requested by the Secretary under the provisions of section 1748 of this title, and in addition to the moneys which are available for range improvements under section 1751 of this title.

(b) Availability of unappropriated funds for subsequent fiscal years

Any amounts authorized by this section not appropriated in one or more fiscal years shall be available for appropriation in any subsequent years.

(c) Fund limitations for prescribed uses; distribution, consultation and coordination; public hearings and meetings; interested parties; priority of cooperative agreements with range users

No less than 80 per centum of such funds provided herein shall be used for on-the-ground range rehabilitation, maintenance and the construction of range improvements (including project layout, project design, and project supervision). No more than 15 per centum of such funds provided herein shall be used to hire and train such experienced and qualified personnel as are necessary to implement on-the-ground supervision and enforcement of the land use plans required pursuant to section 1712 of this title and such allotment management plans as may be developed. Such funds shall be distributed as the Secretary deems advisable after careful and considered consultation and coordination, including public hearings and meetings where appropriate, with the district grazing advisory boards established pursuant to section 1753 of this title, and the advisory councils established pursuant to section 1739 of this title, range user representatives, and other interested parties. To the maximum extent practicable, and where economically sound, the Secretary shall give priority to entering into cooperative agreements with range users (or user groups) for the installation and maintenance of on-the-ground range improvements.

(d) Environmental assessment record and environmental impact statement requirements

Prior to the use of any funds authorized by this section the Secretary shall cause to have prepared an environmental assessment record on each range improvement project. Thereafter, improvement projects may be constructed unless the Secretary determines that the project will have a significant impact on the quality of human environment, necessitating an environmental impact statement pursuant to the National Environmental Policy Act [42 U.S.C. 4321 et seq.] prior to the expenditure of funds.

(Pub. L. 95-514, § 5, Oct. 25, 1978, 92 Stat. 1805.)

REFERENCES IN TEXT

National Environmental Policy Act, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 1905. Grazing fees: economic value of use of land; fair market value components; annual percentage change limitation

For the grazing years 1979 through 1985, the Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Economic Research Service) added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100: *Provided*, That the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 per centum of the previous year's fee.

(Pub. L. 95-514, § 6(a), Oct. 25, 1978, 92 Stat. 1806.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1908 of this title.

§ 1906. Authority for cooperative agreements and payments effective as provided in appropriations

Notwithstanding any other provision of this chapter, authority to enter into cooperative agreements and to make payments under this chapter shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 95-514, § 9, Oct. 25, 1978, 92 Stat. 1807.)

§ 1907. National Grassland exemptions

All National Grasslands are exempted from the provisions of this chapter.

(Pub. L. 95-514, § 11, Oct. 25, 1978, 92 Stat. 1808.)

§ 1908. Experimental stewardship program

(a) Scope of program

The Secretaries of Interior and Agriculture are hereby authorized and directed to develop and implement, on an experimental basis on selected areas of the public rangelands which are representative of the broad spectrum of range conditions, trends, and forage values, a program which provides incentives to, or rewards for, the holders of grazing permits and leases whose stewardship results in an improvement of the range condition of lands under permit or lease. Such program shall explore innovative grazing management policies and systems which might

provide incentives to improve range conditions. These may include, but need not be limited to—

(1) cooperative range management projects designed to foster a greater degree of cooperation and coordination between the Federal and State agencies charged with the management of the rangelands and with local private range users,

(2) the payment of up to 50 per centum of the amount due the Federal Government from grazing permittees in the form of range improvement work,

(3) such other incentives as he may deem appropriate.

(b) Report to Congress

No later than December 31, 1985, the Secretaries shall report to the Congress the results of such experimental program, their evaluation of the fee established in section 1905 of this title and other grazing fee options, and their recommendations to implement a grazing fee schedule for the 1986 and subsequent grazing years.

(Pub. L. 95–514, § 12, Oct. 25, 1978, 92 Stat. 1808.)

CHAPTER 38—CRUDE OIL TRANSPORTATION SYSTEMS [NEW]

Sec.
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2009. Expedited procedures for issuance of permits: enforcement of rights-of-way.
(a) Expedited procedures for approved systems.
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2010. Negotiations with the Government of Canada.
2011. Judicial review.
(a) Notice.
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(c) Jurisdiction of courts.
2012. Authorization for appropriation.

§ 2001. Findings

The Congress finds and declares that—

(1) a serious crude oil supply shortage may soon exist in portions of the United States;

(2) a large surplus of crude oil on the west coast of the United States is projected;

(3) any substantial curtailment of Canadian crude oil exports to the United States could create a severe crude oil shortage in the northern tier States;

(4) pending the authorization and completion of west-to-east crude oil delivery systems, Alaskan crude oil in excess of west coast needs will be transshipped through the Panama Canal at a high transportation cost;

(5) national security and regional supply requirements may be such that west-to-east crude delivery systems serving both the northern tier States and inland States, consistent with the requirements of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act, are needed;

(6) expeditious Federal and State decisions for west-to-east crude oil delivery systems are of the utmost priority; and

(7) resolution of the west coast crude oil surplus and the need for crude oil in northern tier States and inland States require the assignment and coordination of overall responsibility within the executive branch to permit expedited action on all necessary environmental assessments and decisions on permit applications concerning delivery systems.

(Pub. L. 95–617, title V, § 501, Nov. 9, 1978, 92 Stat. 3157.)

REFERENCES IN TEXT

Section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act, referred to in par. (5), is section 410 of Pub. L. 93–153, Nov. 16, 1973, 87 Stat. 594, which is set out as a note under section 1651 of this title.

§ 2002. Statement of purposes

The purposes of this chapter are—

(1) to provide a means for—

(A) selecting delivery systems to transport Alaskan and other crude oil to northern tier States and inland States, and

(B) resolving both the west coast crude oil surplus and the crude oil supply problems in the northern tier States;

(2) to provide an expedited procedure for acting on applications for all Federal permits, licenses, and approvals required for the construction and operation or any transportation system approved under this chapter and the Long Beach-Midland project; and

(3) to assure that Federal decisions with respect to crude oil transportation systems are coordinated with State decisions to the maximum extent practicable.

(Pub. L. 95–617, title V, § 502, Nov. 9, 1978, 92 Stat. 3157.)

§ 2003. Definitions

As used in this chapter—

(1) The term "northern tier States" means the States of Washington, Oregon, Idaho,

Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio.

(2) The term "inland States" means those States in the United States other than northern tier States and the States of California, Alaska, and Hawaii.

(3) The term "crude oil transportation system" means a crude oil delivery system (including the location of such system) for transporting Alaskan and other crude oil to northern tier States and inland States, but such term does not include the Long Beach-Midland project.

(4) The term "Long Beach-Midland project" means the crude oil delivery system which was the subject of, and is generally described in, the "Final Environmental Impact Statement, Crude Oil Transportation System: Valdez, Alaska, to Midland, Texas (as proposed by Sohio Transportation Company)", the availability of which was announced by the Department of the Interior in the Federal Register on June 1, 1977 (42 Fed. Reg. 28008).

(5) The term "Federal agency" means an Executive agency, as defined in section 105 of title 5.

(Pub. L. 95–617, title V, § 503, Nov. 9, 1978, 92 Stat. 3158.)

§ 2004. Applications for approval of proposed crude oil transportation systems

The following applications for construction and operation of a crude oil transportation system submitted to the Secretary of the Interior by an applicant are eligible for consideration under this chapter:

(1) Applications received by the Secretary before the 30th day after November 9, 1978.

(2) Applications received by the Secretary during the 60-day period beginning on the 30th day after November 9, 1978, if the Secretary determines that consideration and review of the proposal contained in such application is in the national interest and that such consideration and review could be completed within the time limits established under this chapter.

An application under this section may be accepted by the Secretary only if it contains a general description of the route of the proposed system and identification of the applicant and any other person who, at the time of filing, has a financial or other interest in the system or is a party to an agreement under which such person would acquire a financial or other interest in the system.

(Pub. L. 95–617, title V, § 504, Nov. 9, 1978, 92 Stat. 3158.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2006 of this title.

§ 2005. Review schedule

(a) Establishment

The Secretary of the Interior, after consultation with the heads of appropriate Federal agencies, shall establish an expedited schedule for conducting reviews and making recommendations concerning crude oil transportation systems proposed in applications filed under section 2004 of this title and for obtaining information necessary for environmental impact statements required under section 4332 of title 42 with respect to such proposed systems.

(b) Additional information

(1) On his own initiative or at the request of the head of any Federal agency covered by the review schedule established under subsection (a) of this section, the Secretary of the Interior shall require that an applicant provide such additional information as may be necessary to conduct the review of the applicant's proposal. Such information may include—

(A) specific details of the route (and alternative routes) and identification of Federal lands affected by any such route;

(B) information necessary for environmental impact statements; and

(C) information necessary for the President's determination under section 2007(a) of this title.

(2) If, within a reasonable time, an applicant does not—

(A) provide information required under this subsection, or

(B) comply with any requirement of section 1734 of this title,

the Secretary of the Interior may declare the application ineligible for consideration under this chapter. After making such a declaration, the Secretary of the Interior shall notify the applicant and the President of such ineligibility.

(c) Recommendations of the heads of Federal agencies

(1) Pursuant to the schedule established under subsection (a) of this section, heads of Federal agencies covered by such schedule shall conduct a review of a proposed crude oil transportation system eligible for consideration under this chapter and shall submit their recommendations concerning such systems (and the basis for such recommendations) to the Secretary of the Interior for submission to the President. After receipt of such recommendations and before their submission to the President, the Secretary of the Interior shall provide an opportunity for comments in accordance with paragraph (2). The Secretary of the Interior shall forward such comments to the President with the recommendations—

(A) in the case of applications filed under section 2004(1) of this title, on or before December 1, 1978, and

(B) in the case of applications filed under section 2004(2) of this title, on or before the 60th day after December 1, 1978.

(2)(A) After receipt of recommendations under paragraph (1) the Secretary of the Interior shall provide appropriate means by which the Governor and any other official of any State and any official of any political subdivision of a State, may submit written comments concerning proposed crude oil transportation systems eligible for consideration under this chapter.

(B) After receipt of recommendations referred to in subparagraph (A), the Secretary of the Interior shall make such comments and recommendations available to the public and provide an opportunity for submission of written comments.

(d) Review by the Federal Trade Commission; effect on the antitrust laws

(1) Promptly after he receives an application for a proposed crude oil transportation system eligible for consideration under this chapter, the Secretary of the Interior shall submit to the Federal Trade Commission a copy of such application and such other information as the Commission may reasonably require. The Commission may prepare and submit to the President a report on the impact of implementation of such application upon competition and restraint of trade and on whether such implementation would be inconsistent with the antitrust laws. Such report shall be made available to the public. Nothing in this subsection shall be construed to prevent the President from making his decision under section 2007(a) of this title in the absence of such report.

(2) Nothing in this chapter shall bar the Attorney General or any other appropriate officer or agent of the United States from challenging any anticompetitive act or practice related to the ownership, construction, or operation of any crude oil transportation system approved under this chapter. The approval of any such system under this chapter shall not be deemed to convey to any person immunity from civil or criminal liability or to create defenses to actions under the antitrust laws and shall not modify or abridge any private right of action under such laws.

(e) Filing and review of permits, rights-of-way applications, etc., not affected

Nothing in this chapter shall be construed to prevent the acceptance and review by any Federal agency of any application for any Federal permit, right-of-way, or other authorizations under other provisions of law for a crude oil transportation system eligible for consideration under this chapter; except that any determination with respect to such an application may be made only in accordance with the provisions of section 2009(a) of this title.

(Pub. L. 95–617, title V, § 505, Nov. 9, 1978, 92 Stat. 3158.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2006. Environmental impact statements

(a) Preparation of environmental impact statements

Any Federal agency required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) to issue an environmental impact statement concerning a proposed crude oil transportation system eligible for consideration under this chapter shall, in preparing such statement, utilize, to the maximum extent practicable and consistent with such Act [42 U.S.C. 4321 et seq.], appropriate data, analyses, conclusions, findings, and decisions regarding environmental impacts developed or made by any other Federal or State agency.

(b) Filing of environmental impact statements

On or before December 1, 1978, all environmental impact statements concerning proposed crude oil transportation systems eligible for consideration under this chapter and required under section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332] shall be completed, made available for public review and comment, revised to the extent appropriate in light of such comment, and submitted to the President and the Council on Environmental Quality; except that in the case of any environmental impact statement concerning any crude oil transportation system which is eligible for consideration and which was filed under section 2004(2) of this title, such actions may be taken not later than 60 days after December 1, 1978.

(c) Report of the Council on Environmental Quality

Promptly after receiving an environmental impact statement referred to in subsection (b) of this section for a crude oil transportation system, the Council on Environmental Quality shall submit to the President a report on the Council's opinion concerning such statement and concerning other matters related to the environmental impact of such system.

(Pub. L. 95–617, title V, § 506, Nov. 9, 1978, 92 Stat. 3160.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a), means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 2007. Decision of the President

(a) Decision concerning approval or disapproval of proposed systems

(1) After reviewing all the information submitted to him concerning the various proposed crude oil transportation systems eligible for consideration under this chapter (including environmental impact statements, comments, reports, recommendations, and other information submitted to him at any time before he makes his decision) and after consulting the Secretaries of Energy, the Interior, and Transportation, the President shall decide which, if any, of such systems shall be approved for the purposes of section 2008 of this title (relating to procedures for waiver of law), section 2009 of this title (relating to expedited procedures for issuance of permits), section 2010 of this title (relating to negotiations with the Government of Canada), and section 2011 of this title (relating to judicial review). A decision approving a crude oil transportation system may include such modifications and alterations in such system as the President finds appropriate. The President shall issue his decision within 45 days after receiving recommendations and comments submitted to him under section 2005(c) of this title, except that the President, for such period as he deems necessary, but not to exceed 60

days, may delay his decision and its issuance if he determines that additional time is otherwise necessary to enable him to make a decision. If the President so delays his decision, he shall promptly notify the House of Representatives and the Senate of such delay and shall submit a full explanation of the basis for such delay.

(2) Any decision made under this subsection approving a system proposed under this chapter shall include a determination that construction and operation of such system is in the national interest and shall be based upon the criteria specified in subsection (b) of this section.

(b) Criteria

(1) The criteria for making a decision under this subsection shall include findings of—

(A) environmental impacts of the proposed systems and the capability of such systems to minimize environmental risks resulting from transportation of crude oil;

(B) the amount of crude oil available to northern tier States and inland States and the projected demand in those States under each of such systems;

(C) transportation costs and delivered prices of crude oil by region under each of such systems;

(D) construction schedules for each of such systems and possibilities for delay in such schedules;

(E) feasibility of financing for each of such systems;

(F) capital and operating costs of each of such systems, including an analysis of the reliability of cost estimates and the risk of cost overruns;

(G) net national economic costs and benefits of each such system;

(H) the extent to which each system complies with the provisions of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act;

(I) the effect of each such system on international relations, including the status and time schedule for any necessary Canadian approvals and plans;

(J) impact upon competition by each system;

(K) degree of safety and efficiency of design and operation of each system;

(L) potential for interruption of deliveries of crude oil from the west coast under each such system;

(M) capacity and cost of expanding such system to transport additional volumes of crude oil in excess of initial system capacity;

(N) national security considerations under each such system;

(O) relationship of each such system to national energy policy; and

(P) such other factors as the President deems appropriate.

(2) The period of time for which such findings shall be made shall be the useful life of the crude oil transportation system involved.

(c) Publication of findings and decision

The President shall make available to the public at the time of issuance of a decision under this section a written statement setting forth findings with respect to each of the criteria specified in subsection (b) of this section and describing the nature and route of crude oil transportation systems, if any, which are approved in the decision. If the President's decision is to approve a system, each statement shall set forth his reasons for approving such system over other proposed systems (if any) eligible for consideration under this chapter. Such statement along with notification of such decision shall be published in the Federal Register.

(Pub. L. 95–617, title V, § 507, Nov. 9, 1978, 92 Stat. 3160.)

REFERENCES IN TEXT

Section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act, referred to in subsec. (b)(1)(H), is section 410 of Pub. L. 93–153, Nov. 16, 1973, 87 Stat. 594, which is set out as a note under section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2008, 2010, 2011 of this title.

§ 2008. Procedures for waiver of Federal law

(a) Waiver of provisions of Federal law

The President may identify those provisions of Federal law (including any law or laws regarding the location of a crude oil transportation system but not including any provision of the antitrust laws) which, in the national interest, as determined by the President, should be waived in whole or in part to facilitate construction or operation of any such system approved under section 2007 of this title or of the Long Beach-Midland project, and he shall submit any such proposed waiver to both Houses of the Congress. The provisions so identified shall be waived with respect to actions to be taken to construct or operate such system or project only upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date of receipt by the House of Representatives and the Senate of such proposal.

(b) Joint resolution

The resolving clause of the joint resolution referred to in subsection (a) of this section is as follows: "That the House of Representatives and Senate approve the waiver of the provisions of law ( ) as proposed by the President, submitted to the Congress on , 19 .". The first blank space therein being filled with the citation to the provisions of law proposed to be waived by the President and the second blank space therein being filled with the date on which the President submits his decision to wave[1] such provisions of law to the House of Representatives and the Senate. Rules and procedures for consideration of any such joint resolution shall be governed by section 719f(c) and (d) of title 15, other than paragraph (2) of section 719f(d) of title 15, except that for the purposes of this subsection, the phrase "a waiver of provisions of law" shall be

[1] So in original. Probably should be "waive".

substituted in section 719f(d) of title 15 each place where the phrase "an Alaska natural gas transportation system" appears.

(Pub. L. 95–617, title V, § 508, Nov. 9, 1978, 92 Stat. 3162.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2009. Expedited procedures for issuance of permits: enforcement of rights-of-way

(a) Expedited procedures for approved systems

After issuance of a decision by the President approving any crude oil transportation system, all Federal officers and agencies shall expedite, to the maximum extent practicable, consistent with applicable provisions of law, all actions necessary to determine whether to issue, administer, or enforce rights-of-way across Federal lands and to issue Federal permits in connection with, or otherwise to authorize, construction and operation of such system. Any such action shall be consistent with applicable provisions of law. After taking any such action, such officer or agency shall publish notification of the taking of such action in the Federal Register.

(b) Expedited procedures for Long Beach-Midland project

All decisions regarding issuance of Federal permits, rights-of-way, and leases and other Federal authorizations necessary for construction and operation of the Long Beach-Midland project shall be consistent with applicable provisions of Federal law, except that such decisions shall be made within 30 days after the date this chapter becomes effective. The President may extend the date by which such decisions, under the preceding sentence, are to be made to a date not later than 90 days after the effective date of this chapter. Notification of the making of such decisions shall be published in the Federal Register. Nothing in this section affects any decision made before November 9, 1978.

(c) Law governing rights-of-way

Rights-of-way over any Federal land with respect to an approved crude oil transportation system or the Long Beach-Midland project shall be governed by the provisions of section 185 of title 30, other than subsection (w)(2) of such section.

(Pub. L. 95–617, title V, § 509, Nov. 9, 1978, 92 Stat. 3162.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2007 of this title.

§ 2010. Negotiations with the Government of Canada

With respect to any crude oil transportation system approved under section 2007(a) of this title all or any part of which is to be located in Canada, the President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine what measures can be taken to expedite the granting of approvals by the Government of Canada for construction or operation of such system, and he is authorized and requested to explore the possibility of further exchanges of crude oil supplies between the United States and Canada.

(Pub. L. 95–617, title V, § 510, Nov. 9, 1978, 92 Stat. 3163.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2011. Judicial review

(a) Notice

The President or any other Federal officer shall cause notice to be published in the Federal Register and in newspapers of general circulation in the areas affected whenever he makes any decision described in subsection (b) of this section.

(b) Review of certain Federal actions

Any action seeking judicial review of an action or decision of the President or any other Federal officer taken or made after November 9, 1978, concerning the approval or disapproval of a crude oil transportation system or the issuance of necessary rights-of-way, permits, leases, and other authorizations for the construction, operation, and maintenance of the Long Beach-Midland project or a crude oil transportation system approved under section 2007(a) of this title may only be brought within 60 days after the date on which notification of the action or decision of such officer is published in the Federal Register, or in newspapers of general circulation in the areas affected, whichever is later.

(c) Jurisdiction of courts

An action under subsection (b) of this section shall be barred unless a petition is filed within the time specified. Any such petition shall be filed in the appropriate United States district court. A copy of such petition shall be transmitted by the clerk of such court to the Secretary. Notwithstanding the amount in controversy, such court shall have jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided and to provide appropriate relief. No State or local court shall have jurisdiction of any such claim whether in a proceeding instituted before, on, or after the date this chapter becomes effective. Any such proceeding shall be assigned for hearing at the earliest possible date and shall be expedited by such court. No court shall have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization in connection with a crude oil transportation system approved under section 2007(a) of this title or the Long Beach-Midland project, except as part of a final judgment entered in a case involving a claim filed pursuant to this section.

(Pub. L. 95–617, title V, § 511, Nov. 9, 1978, 92 Stat. 3163.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2012. Authorization for appropriation

There are authorized to be appropriated to the Secretary of the Interior to carry out his responsibilities under this chapter not to exceed $500,000 for the fiscal year ending on September 30, 1978, and not to exceed $1,000,000 for the fiscal year ending on September 30, 1979.

(Pub. L. 95-617, title V, § 512, Nov. 9, 1978, 92 Stat. 3164.)